

EXHIBIT 95

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

* * * * *

AUTHENTICOM, INC.

Plaintiff,

-vs-

Case No. 17-CV-318-JDP

CDK GLOBAL, INC., LLC
and THE REYNOLDS and
REYNOLDS COMPANY,

Madison, Wisconsin
June 26, 2017
1:50 p.m.

Defendants.

* * * * *

STENOGRAPHIC TRANSCRIPT-FIRST DAY OF EVIDENTIARY HEARING

AFTERNOON SESSION

HELD BEFORE THE HONORABLE JAMES D. PETERSON,

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THE CLERK: This Honorable Court is again in session. Please be seated and come to order.

1 THE COURT: All right. We can take the witness
2 back on the witness stand and we'll proceed with the
3 cross-examination, part one.

4 MS. GREGOR: May I ask a question for the order,
5 procedural?

6 THE COURT: Yes.

7 MS. GREGOR: Two questions actually. One is we
8 were wondering whether the Court is considering the
9 declarations submitted with the PI briefing to be already
10 in evidence for purposes of considering the motion.

11 THE COURT: I hadn't considered that very
12 question. How do you want me to handle it? If the
13 parties are in agreement to submitting them, then I don't
14 have to worry about taking a lot of evidence when we only
15 have two days.

16 MS. GREGOR: We would suggest that the
17 declarations just be moved into evidence so that we don't
18 need to use time to duplicate today.

19 THE COURT: That sounds good. What's the
20 defense view of that?

21 MR. RYAN: We don't have a problem with using
22 declarations. There are a few declarations though that
23 we might like to -- Mr. Smith, paragraphs 3 for 4, it's
24 pure hearsay; to put it on the record that we objected to
25 it on hearsay grounds. It's not -- and we don't care

1 about all the hearsay, but there are certain of the
2 declarations that we care about. So subject to that, we
3 can just send the Court objections to the following
4 paragraphs of the declarations.

5 THE COURT: I mean it would -- it would be part
6 of the other side of having the opportunity to address
7 the objections through a little more examination if we
8 just did it that way.

9 MR. RYAN: I'm thinking of people who won't be
10 here to testify.

11 THE COURT: Well, then the declaration is all
12 I've got; so --

13 MR. RYAN: That's right.

14 THE COURT: -- for those people, if I'm only
15 going to get them on paper anyway, then you can file and
16 lodge your objections on paper.

17 MR. RYAN: That was my question.

18 THE COURT: That would be fine too.

19 MR. RYAN: And we're not going to object to the
20 putting in, there just may be a few paragraphs in a few
21 declarations that we want to lodge an objection to if
22 that's okay with the Court.

23 THE COURT: That seems efficient.

24 MS. GREGOR: That seems fine. So they're in
25 evidence and the parties can file objections if they

1 wish. Is that --

2 THE COURT: Yes.

3 MS. GREGOR: One more question. How long does
4 the Court typically --

5 THE COURT: Usually we go -- we usually go till
6 5:30. So when you divided things up, is that what you
7 had thought?

8 MS. GREGOR: The reason for my request is that
9 frankly we're a little bit behind where we thought we
10 would be on time, and we have some nonparty witnesses in
11 attendance, and we want to make sure to plan accordingly
12 around schedules for travel and things like that. So...

13 THE COURT: Typically it's 5:30. If you think
14 we need to adjust whatever, we can push it a little bit.

15 MS. GREGOR: We would like more time if the
16 Court would be willing to give it.

17 THE COURT: Why don't we -- let's go until six
18 o'clock tonight, and by announcing this, the people that
19 need to take action as a result of this can do that. And
20 why don't we start at -- let's start at eight o'clock
21 tomorrow.

22 MS. GREGOR: Thank you.

23 THE COURT: Okay? That will give us just under
24 two hours. It's an hour ahead of schedule.

25 MS. GREGOR: Thank you.

1 THE COURT: Don't blow it. Ready for your
2 cross?

3 MR. RYAN: I am, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. RYAN:

6 Q Mr. Cottrell, my name is Mark Ryan. I represent
7 CDK. Good afternoon.

8 A Good afternoon, Mr. Ryan.

9 Q Mr. Cottrell, you've been in the industry a long
10 time.

11 A I have.

12 Q And part of what you're doing with your lawsuit is
13 you're not just standing up for Authenticom, but you're
14 standing up for dealers as well. That's your view;
15 correct?

16 A That is my view, yes.

17 Q And CDK has about 7,000 dealers in the United
18 States; that sound about right to you? About 7,300?

19 A Yes, that sounds correct.

20 Q And CDK has around 4,400 or so? Does that sound
21 about right?

22 A You mean Reynolds and Reynolds.

23 Q Reynolds and Reynolds. Thank you.

24 A Yes, that sounds correct for Reynolds and Reynolds.

25 Q Now, your view is that the dealers, because it's

STEPHEN COTTRELL - CROSS

1 their data, they should be allowed -- they should be
2 allowed to allow Authenticom the access that Authenticom
3 obtains with those dealers; correct? That's your view.
4 The dealers should decide whether Authenticom gets access
5 to the dealers' DMS; correct?

6 A Yes. I believe that the dealership be able to
7 authorize that access; correct.

8 Q And the way you look at things, the dealers should
9 also be allowed to let other firms, not just Authenticom,
10 but if they say there's another integrator out there that
11 they'd like to deal with, that would be okay too; right?

12 A If the dealer is so authorized, yes.

13 Q Right. And even vendors, if vendors wanted to hook
14 up directly, that should be up to the dealer; correct?

15 A That's how it used to be, yes.

16 Q Right. And so you could have a system where 7,000
17 CDK dealers are letting in whomever the individual dealer
18 decides; correct?

19 A That's not how I see it.

20 Q But you would say that you, Authenticom, are
21 especially good at cybersecurity, aren't you? And you're
22 proud of that.

23 A We're very good at the security that's prevalent to
24 our product, yes. I wouldn't say cybersecurity at large.

25 Q Okay. But data security.

1 A Yes, indeed.

2 Q Okay. And it's conceivable then that there could be
3 another integrator in the market that's not as good at
4 data security as Authenticom; correct?

5 A It is conceivable, yes.

6 Q So in your view of the world, dealers would have the
7 option to deal with the best data security firm out
8 there, Authenticom, or firms that are not as good as
9 Authenticom at data security. It's up to the dealer;
10 correct?

11 A It's our view that the dealers are very savvy
12 business people and they make appropriate decisions based
13 on their particular business needs, yes.

14 Q So you're confident that all 7,000 -- or all 11,000
15 dealers would make good decisions all the time with
16 respect to who they were going to let onto their systems.

17 A In order for an integrator to be viable, they can't
18 just have a few dealers allowing them to have access to
19 their system. In order for an integrator to be viable,
20 they have to have a significant amount of market share
21 and it would be -- it would require a lot of dealers to
22 mistakenly place their trust with an insecure integrator.

23 Q And you don't pay the dealers for your services. I
24 mean the dealers don't pay you.

25 A Some dealers do.

1 Q How many -- what percentage of your dealers do you
2 charge?

3 A Probably somewhere less than 5 percent but more than
4 2. 2 to 5 percent.

5 Q If I have this right, do you pay the dealers for
6 access to their systems?

7 A No, we do not.

8 Q So suppose a firm came along and said I'll pay the
9 dealers a little bit for the access. That might interest
10 some dealers; correct?

11 A Knowing the dealer community as well as I do, I
12 think they would say what's the catch.

13 Q Right. And the catch might be that the company is
14 skimping on data security or other aspects of smooth
15 operation unbeknownst to the dealer; right?

16 A And a prudent dealer might say no, thank you.

17 Q A prudent one.

18 A That's correct.

19 Q So at the end of the day -- we'll move on to
20 something else. But at the end of the day, in your view
21 it's kind of open season for the dealers. If you're an
22 integrator or a vendor or another firm of some sort that
23 wants access to the data, it's between your -- that firm
24 and the dealer, notwithstanding any contractual
25 restrictions that the DMS company might put in the

1 dealer's contract. Is that your view?

2 A Can you restate the question without the
3 restrictions?

4 Q The DMS dealer says -- a DMS provider says to the
5 dealer you can't -- you can't make your data available to
6 anyone else, only to me, the DMS provider. I'll do all
7 the data extraction for you, and that's in the contract
8 at the time the dealer enters into the arrangement with
9 the DMS in your view should not be enforced; correct?
10 The dealer, notwithstanding the contract that the dealer
11 signed, it should still have the right to give data
12 access to whomever it pleases.

13 A I'm probably not the best person to discuss the
14 enforceability of that provision, but I can tell you that
15 what's prevailed in the market has been exactly that.
16 The dealers have for decades been able to make that
17 choice, yes.

18 Q Now, with respect to Reynolds and Reynolds, they
19 have been cutting Authenticom off for years; correct?

20 A They have been attempting to interfere with our
21 contractual relationships, yes.

22 Q And that battle has gone back and forth since at
23 least 2009?

24 A That's correct, yes.

25 Q And there was never a time when Reynolds really

1 stopped cutting you off; correct?

2 A Only for their own dealers.

3 Q Okay. So -- right. For their own dealers. They
4 never stopped cutting you off with their dealers. They
5 have never -- let me stop there; is that correct?

6 A Yes. For the dealerships that they contracted for
7 us to provide data access to, they never blocked us,
8 that's correct.

9 Q Okay. Now, you made mention earlier today, I
10 believe, of an outfit called AVRS?

11 A That's correct.

12 Q And you said on behalf of AVRS you extract data at
13 some CDK dealers; is that right?

14 A That is correct, yes.

15 Q Now, you know that AVRS is owned by a joint venture
16 of Reynolds and CDK; correct?

17 A Yes, I do.

18 Q AVRS is owned by CVR; right? That's the name of the
19 joint venture.

20 A I'll take your word for it.

21 Q And AVRS has about 700 dealers?

22 A I'm not familiar with their total dealer count.

23 Q Do you know that AVRS is using Authenticom to pull
24 data at only four of the CDK dealers?

25 A That's not correct.

1 Q And that it's only about five dealers on behalf of
2 Reynolds? Five Reynolds dealers?

3 A Yeah. I'm not certain of the exact number, but I
4 believe that it's more than that. But I don't know.

5 Q And what happened was AVRS was purchased by the CDK
6 and Reynolds joint venture in 2015. That's how you came
7 to those contracts and those contracts are being phased
8 out; correct?

9 A We've seen cancellations from AVRS, yes.

10 MR. RYAN: And, Your Honor, that's in the
11 Bonifay declaration. B-o-n-i-f-a-y. That's a
12 declaration submitted on behalf of CDK.

13 Q When Authenticom -- I want to ask you a couple
14 questions about -- some questions about DealerVault. I
15 think you said at the end of the morning session that
16 DealerVault started in 2014; right?

17 A Our first commercial launch was at NADA in 2014,
18 that's correct.

19 Q And that was a big step for your company; correct?

20 A Yes, it was.

21 Q And it was in some ways revolutionary; correct?
22 From your perspective.

23 A Thank you.

24 Q Right. And you were going to be collecting and
25 storing a lot of the data; correct? In DealerVault.

1 A Yes.

2 Q And can you give us an idea of how much data is in
3 DealerVault? Can you express it in terabytes or
4 gigabytes or --

5 A Actually a total capacity of DealerVault I cannot,
6 no.

7 Q It's massive?

8 A I wouldn't say massive, no, not in the terms of
9 databases today.

10 Q Okay.

11 A I think it's probably measured in terabyte.
12 Single-digit terabyte numbers would be my best guess.

13 Q Now, a dealer can access DealerVault; correct?

14 A Yes.

15 Q And you give them a user ID and password?

16 A Yes, we do.

17 Q And in your standard contract, you tell them, the
18 dealer, only the unique user can use that logon
19 information that he or she is given; right?

20 A I don't believe that's what the contract says.

21 Q So can we look at -- I think it was marked earlier
22 as plaintiff's exhibit, so maybe we can use that rather
23 than the defendants' exhibit. If you look at exhibit --
24 plaintiff's Exhibit 28.

25 A I'm sorry, I don't see a 28 if these are in

1 numerical orders.

2 THE COURT: I think it's the very first one in
3 the binder, the other binder.

4 MS. MILLER: It's in the black binder.

5 THE WITNESS: Too many binders.

6 MR. RYAN: That's exactly right. There's too
7 many.

8 BY MR. RYAN:

9 Q And could you go to paragraph 6.7?

10 A I can.

11 Q And that's entitled *Password Security*; is that
12 right?

13 A It is, yes.

14 Q And it says "DealerVault will issue to dealership or
15 shall authorize an administrator to issue a password for
16 each user authorized to use dealership's account";
17 correct?

18 A It does.

19 Q And then it says "Dealership and dealership's users
20 must maintain the confidentiality of all passwords and
21 ensure that each password is used only by the unique
22 authorized user to whom such password is assigned";
23 correct?

24 A It is.

25 Q All right. Now, when the data is in DealerVault, in

1 particular the dealer's data, the dealer owns that data;
2 correct?

3 A Yes, they do.

4 Q But under your agreement, the dealer could not give,
5 without your authorization, the password to a third-party
6 to access DealerVault; correct?

7 A That's not how I read that paragraphs.

8 Q That's not how you read that restriction.

9 A No.

10 Q So the dealers are free to hand out the user IDs
11 without your authority to whoever they please?

12 A Let me try and explain. DealerVault will issue the
13 dealership or shall authorize the administrator to issue
14 a password for each user authorized to use dealership's
15 account. It's up to the administrator, the dealership,
16 to determine who that is. The dealer controls the
17 assessment to the interface.

18 Q So the dealer can share the credentials with
19 whomever the dealer wishes.

20 A Yes, they can.

21 Q So the dealer could give those credentials, as you
22 read this, to a data firm of some sort and that data firm
23 could then pull data back from DealerVault?

24 A They can't pull data back from DealerVault, but
25 DealerVault will push data to them pursuant to the

1 dealer's specific authorization, yes.

2 Q Now, when you were taking -- when you were getting
3 logon credentials, say, at CDK dealers, you often did
4 that without telling CDK that you were going to sign on
5 as a user of the dealer system; correct?

6 A We did not make it a point to notify CDK we were
7 using usernames or passwords, no.

8 Q Right. You asked the dealer to give you a set of
9 the dealer's logon credentials; correct?

10 A We asked them to set us up on the system like they
11 would an employee and then we acted specifically as their
12 agent and authorized.

13 Q And you knew that was contrary to the dealer's
14 agreement with the DMS -- with CDK; correct?

15 A When we first launched this company, we were not
16 privy to those contracts or agreements. We've only acted
17 as specifically authorized and instructed by the dealer
18 to do as their agent.

19 Q Okay. So you started the company in 2002 you said;
20 correct?

21 A Authenticom.

22 Q Right.

23 A Yes, that's correct. Authenticom.

24 Q Did there come a time when you understood that you
25 were obtaining login credentials in violation of the

1 DMS's provider's agreement with the dealer?

2 A Yes. Mr. Schaefer made me aware of that in, I think
3 it was April of 2015. He served us with a tortuous
4 interference agreement or tortious interference lawsuit.
5 Through the lawsuit.

6 Q But April 2015, is it your testimony that that's the
7 first time that you had any idea that the way that you
8 were accessing the systems of CDK or Reynolds was in
9 violation of contracts that those firms had with dealers?

10 A No, that's not my testimony.

11 Q Okay. When did you first learn that you were
12 getting around the contractual obligations that the
13 dealers had to their DMS providers?

14 A When Mr. Schaefer provided us with a redacted copy
15 of the Reynolds dealer agreement.

16 Q And when was that?

17 A First quarter of 2015.

18 Q So that's my question. Until 2015, you did not know
19 that you had been violating dealer contracts by acquiring
20 dealer logon credentials and signing on as a dealer
21 employee.

22 MR. NEMELKA: Objection, Your Honor.

23 THE COURT: What's the objection?

24 MR. NEMELKA: It's argumentative.

25 THE COURT: Overruled.

1 BY MR. RYAN:

2 Q Do you have the question in mind, sir?

3 A No.

4 Q Okay. Then I'll go back. So if you --

5 THE COURT: Let me try. So 2015, first quarter,
6 that's when you first found out there was a problem that
7 R&R had with your using the dealer credentials.

8 THE WITNESS: That's the first time I saw the
9 actual contract, Your Honor.

10 THE COURT: Okay.

11 THE WITNESS: Prior to that, there were lots of
12 things that had been said; okay? Lots of talk in the
13 marketplace. Historically there has been lots of things
14 said and lots of talk in the marketplace. We had not
15 seen any direct evidence of that contract provision. We
16 asked the dealers if we were authorized. The dealer said
17 you are authorized.

18 THE COURT: Okay. So did you ever hear about
19 any other lawsuits or talk about how you're not supposed
20 to use somebody else's credentials to log in on gmail or
21 Facebook or basic terms of use in other online systems?

22 THE WITNESS: I'm sorry, can you restate the
23 question?

24 THE COURT: Sure. I mean it's like gmail,
25 Facebook, all sorts of user agreements that companies

1 have say these are your credentials. You can't share
2 with anybody else. So that issue never came up until
3 2015 in your mind?

4 THE WITNESS: That issue came up from statements
5 that Reynolds and Reynolds and CDK had made. That was
6 not the view in the marketplace. That was not the view
7 that the dealers shared, and that was certainly not --
8 certainly was not the view that the dealers shared
9 en masse.

10 THE COURT: And so did the dealers ever say I
11 don't care what the agreement say. These are my
12 credentials, my data, you're using them?

13 THE WITNESS: Many dealers did, in fact, say
14 that.

15 THE COURT: All right. I think I see the lay of
16 the land here. So people -- people were saying that
17 maybe these credentials really shouldn't be shared, but
18 the dealer said they're my credentials; my data. I'm
19 giving them to you to use.

20 THE WITNESS: That's correct.

21 THE COURT: Okay. All right.

22 MR. RYAN: Thank you.

23 BY MR. RYAN:

24 Q 2013, I think there's been testimony that you faced
25 a very difficult situation because Reynolds had disabled

1 you at a lot of Reynolds dealers; correct?

2 A That's correct.

3 Q And that was a very difficult moment for your
4 business?

5 A It was most challenging based on our relationships,
6 yes.

7 Q Now, certainly at that time as you faced this
8 challenge and you saw yourself disabled, would it have
9 been hundreds of dealers? Thousands of dealers? What
10 was the extent of the Reynolds action at the end of 2013?

11 A Over the course of four or five months, they
12 disabled us in several thousand dealerships approximately
13 27,000 times.

14 Q Did you have a suspicion at that point that maybe
15 Reynolds thought that your access to their system was
16 unauthorized?

17 A I had heard that from Reynolds, but it wasn't until
18 in the first quarter 2015 that we saw the actual
19 contract.

20 Q Okay. Now, are you familiar with a DMS firm by the
21 name of DealerBuilt?

22 A Yes, I am.

23 Q And I think you might have mentioned them today;
24 correct?

25 A Correct.

1 Q You do some -- do you have a business relationship
2 with them?

3 A Yes, we do. We have an agreement with them.

4 Q And at the end of 19 -- of last year, 2016, they
5 were hacked; correct? DealerBuilt.

6 A I just recently learned of that, yes.

7 Q And if -- in the white book, Exhibit 1 -- tab 151,
8 which is defendants' Exhibit 151, that's a story that
9 appeared online in August of 2016 about the loss of data;
10 right?

11 A It appears to be so. I haven't seen this story.

12 Q And in fact, millions of social security numbers and
13 the confidential information of car buyers was -- found
14 its way to the internet as a result of the DealerBuilt
15 hack; correct?

16 A I find that highly unlikely.

17 Q Those were the press reports; right?

18 A I haven't read the article. Would you like me to
19 read it?

20 Q No. If you weren't aware of it, if you haven't been
21 aware of it, I don't --

22 A I was unaware of it.

23 Q Okay. So you didn't know that there had been this
24 massive hack.

25 A I was unaware of the massive or I was unaware of the

1 preferred hack, yes.

2 Q Well, I mean it does -- you do believe that hackers
3 may target the kind of information that's in DMSs;
4 correct?

5 A It is possible, but it's not a high value target.

6 Q How often does DealerVault -- how often are hack
7 attempts made of the DealerVault system?

8 A I don't have the exact numbers of attempts against
9 the Microsoft Azure firewalls, but I'm sure that they are
10 significant.

11 Q But you don't monitor the amount of hacking.

12 A I don't personally, and there has been no hack.

13 Q No, no, I'm just talking about attempts.

14 A By attempts, if you're talking about someone trying
15 to penetrate a firewall --

16 Q Yes.

17 A -- that does happen routinely, yes.

18 Q So there are routine attempts made to penetrate that
19 DealerVault firewall; right?

20 A That's why we enlisted the support of Microsoft.

21 Q Right. And real quickly, everyone agrees that data
22 security is important to everyone in the automotive
23 industry; right?

24 A Correct.

25 Q There's no question about that. Let me see if I

1 understand your ability to access data at a dealer. Your
2 ability to access data at a dealers' DMS depends on the
3 level of authorization the dealer gives you; correct?

4 A That is correct.

5 Q And you, in the operations of Authenticom, you only
6 ask for authorization to get the files that you need for
7 your business; correct?

8 A That is correct.

9 Q You do not go beyond what you need to ask for other
10 people's data or sensitive information you do not need;
11 correct?

12 A That is correct. In the normal operations, that's
13 correct.

14 Q But somebody might, right, in the future? If
15 there's some other data integrator, maybe they won't be
16 as principled as you; correct? They could get from the
17 dealer the identical access to the DMS that the top
18 person at the dealer has, the system administrator, if
19 the system administrator granted that access; correct?

20 A I'm sure there's phantoms in the closet, yes.

21 Q And I take it you continue to work to improve
22 DealerVault's and Authenticom's data security?

23 A Diligently, yes.

24 Q It's expensive?

25 A Very expensive.

1 Q Now, in tab 1 of the book is your declaration. You
2 actually submitted two declarations in this case;
3 correct?

4 A Yes, I did.

5 Q There was a declaration of Steve Cottrell, which is
6 at tab one, and then there's a reply declaration of Steve
7 Cottrell which is at tab 2. And with respect to your
8 declaration, you make reference in there to an award from
9 Microsoft; correct?

10 A Yes, we do.

11 Q And this is in paragraph --

12 A It's actually not an award, it's a certification.

13 Q A security gold certification?

14 A Yes. It is the gold certification, that's correct.

15 Q And let me just find it there. At paragraph 31,
16 page six of your declaration, behind tab 1, you say
17 "Authenticom partners with Microsoft Azure cloud services
18 and has achieved Microsoft's top-level gold security
19 certification three years in a row." Do you see that?

20 A I do.

21 Q Does Microsoft give a top-level gold security
22 certification?

23 A Not specific to security.

24 Q And so it does not give out top-level gold security
25 certification; correct?

1 A That is correct.

2 Q And so you did not receive a top-level gold security
3 certification three years in a row; correct?

4 A We did receive a gold certification for two areas:
5 One was application development and the other one was
6 cloud services. In those certifications, there is
7 components around security and safe practices.

8 Q But you didn't get what the declaration says you
9 got, did you, sir?

10 A That does not exist, no.

11 Q And in fact, it's not just in your declaration where
12 you've made this statement, you've made this statement
13 many times in public; correct? that you have received a
14 Microsoft top-level gold security certification. You've
15 said that lots of times.

16 A I think the public statements basically talk about
17 becoming a three-time Microsoft gold certified partner.
18 I don't know that the term security is involved in that.

19 Q But you read your affidavit before you signed it in
20 this case.

21 A I did.

22 Q Okay. Thank you. I want to ask you about
23 Authenticom's access to -- I'm going to start with
24 Reynolds.

25 A Okay.

1 Q Information in a Reynolds DMS. There is a program
2 where you can download -- where you can receive data from
3 Reynolds' dealers and its consistent with Reynolds'
4 practices and policies; correct?

5 A If you're referring to Dynamic Reporting, I would
6 assume so, yes.

7 Q I am referring to Dynamic Reporting.

8 A Yes. As they produce it, I assume that that's
9 consistent with their practices and policies, yes.

10 Q Right. It's one of their programs.

11 A Correct.

12 Q Right. Okay. So -- and Dynamic Reporting is that
13 the dealer is allowed to run a report; can be whatever
14 kind of report they want. They can then electronically
15 transmit the data generated by the report to you;
16 correct? To Authenticom?

17 A The first part of your statement is that --

18 Q They download the data.

19 A The first part of your statement is that they could
20 download any data that they wanted. I would not agree
21 with that part.

22 Q Okay. So I misspoke. But suppose there's a report
23 that you would like. There are reports that you can get
24 from the dealers by asking them, pursuant to the Dynamic
25 Reporting Program that Reynolds has, say dealer, please

1 download the following data, transmit it to me,
2 Authenticom, and then you can transmit it to the vendors;
3 correct?

4 A That is correct, yes.

5 Q And, in fact, you take advantage of that program.

6 A Yes, we do.

7 Q And so there is available to Authenticom and to
8 other data integrators access to information on the
9 Reynolds DMSs if that access is obtained in a particular
10 way, the Dynamic Reporting way; correct?

11 A That is correct. It does require mainly
12 intervention from the dealer. There can be no automation
13 of that process per se.

14 Q Exactly. The dealer's employee, for example, might
15 manually enter into the DMS the data request.

16 A That is correct.

17 Q There is no automated -- let me try that again.
18 There is no automated scraping of the data as you do
19 with, say, CDK systems; right?

20 A That is correct, yes.

21 Q And in fact, a declaration has been submitted in
22 this case from a Lesha, L-e-s-h-a, Wood, if I remember
23 Ms. Woods' name correctly, and she is an employee of John
24 Eagle dealerships in Texas; correct?

25 A Yep. What's your number here? I'm not tracking.

1 Q I'm sorry. It's tab 162 in the white book. It's
2 the -- while you're looking for it, it's the declaration
3 of Lesha, L-e-s-h-a, Wood, W-o-o-d.

4 A Yes, I can see that now.

5 Q Have you looked at this prior to today?

6 A Briefly. I'd like to review if I could.

7 Q Sure. Sure. Go ahead.

8 THE COURT: Why don't you ask some questions and
9 then you can review it, to the extent necessary, to
10 answer the questions. We don't need to take time to have
11 people read declarations, otherwise I'll just go upstairs
12 and read them myself. Let's keep the questions going.

13 Q Second page, paragraph 5, Mr. Cottrell, where
14 Ms. Wood says "I personally handled the Dynamic Reporting
15 scheduling and manual export process on a daily basis for
16 John Eagle." Do you see that?

17 A I do.

18 Q Then she says she exports 100 reports a day. Do you
19 see that?

20 A I do.

21 Q And it says it takes her an hour to do so, but she
22 says she's multitasking, as I guess a lot of us do these
23 days. So it's not a full dedicated hour to do that;
24 correct?

25 A I can see her statement, yes.

1 Q Okay. Thank you. And so she -- all I'm driving at,
2 sir, is this is a realistic way for you to get data
3 without touching the dealers' DMS that is actually used
4 to a substantial extent by dealers in this country;
5 correct?

6 A I would not agree with that statement.

7 Q And CDK has an equivalent program; right?

8 A I'm unaware of a CDK Program that's equivalent to
9 that other than I deal with Ryan reports and renewing
10 them and sending them out.

11 Q I guess what I'm saying is CDK dealers can also run
12 reports; is that correct?

13 A Yes, they can.

14 Q And when we're talking about reports here, we're
15 talking about electronic transmissions of data; correct?

16 A Yes, we are.

17 Q We're not -- because when I first was learning about
18 this, I thought gee, I have to print out a report and
19 then send a piece of paper. That's not what's going on
20 here; correct?

21 A That is correct.

22 Q It goes along -- it can be sent -- what was the
23 expression was used this morning, a PTF file? Or a --

24 A FTP.

25 Q -- FTP file? They can send it with an FTP file;

1 right?

2 A That's correct.

3 Q Or a zip file?

4 A We wouldn't accept a zip file via email, no.

5 Q Okay. So there is this other program; right?

6 A There are other programs, yes.

7 Q Now, you say that -- I think you said you, not only
8 you, Authenticom not only pulls data, but it pushes data
9 back into the system?

10 A That's correct.

11 Q And that's called writeback?

12 A That's the term for it, yes.

13 Q And you say -- I think you said you only run a
14 single, on average, one bulk data query per day for a
15 dealer?

16 A One bulk filing transfer. A query is kind of --
17 it's been used in a lot of different ways in this case,
18 but there's one bulk transfer at night, that's correct.

19 Q So if it's only one transfer a day from a dealer,
20 that could easily been handled by the Dynamic Reporting
21 Program of Reynolds; correct?

22 A That would not incorporate the writeback function
23 though that you're talking about.

24 Q Thank you. That doesn't allow you to writeback;
25 correct?

1 A That is correct.

2 Q But it's only a small percentage of your customers
3 that --

4 A Can you go back to your previous question?

5 Q Yes. Can I finish the one I've got?

6 A Sure. Of course.

7 Q It's only a small part, number of your customers who
8 writeback or for whom you writeback.

9 A That is correct.

10 Q All right. You wanted to go back?

11 A Yes. So from a practical standpoint, receiving a
12 report, as you put it, from a dealership is highly
13 problematic. Even in a single instance, okay, for a
14 dealership to utilize the Dynamic Reporting interface
15 with report generator functions that are embedded in the
16 CDK system requires a significant degree of expertise.
17 Many dealerships don't actually have that expertise.
18 Over a decade or more that we've been providing these
19 services, we've had hundreds of dealers try and send us
20 reports to our specifications. One actually sends them,
21 what's referred to as the English statements, and ask
22 them to transpose those onto their systems and without
23 fail they never get it right; okay? We pass files back
24 three, four, five times; okay? This is not a process
25 that's as seamless as you make it to be. It is not very

1 efficient.

2 Q But -- I'm a little confused, I'll be honest with
3 you. So these are the same dealers that you say or you
4 believe are perfectly capable of assessing data security
5 issues and data security risks in dealing with
6 third-party integrators. But it's really beyond their
7 ability to download these reports and send them in an FTP
8 file.

9 A I think we're talking about two different people in
10 the dealership. The business assessments would --

11 THE COURT: I'm going to cut this off because I
12 think I get the point. Your point is that the dealers
13 are smart enough to hire somebody who's got good
14 security, but it's a pain in the ass to go through and
15 download all these reports and try to get them sent to
16 you.

17 THE WITNESS: You got it.

18 THE COURT: There we go. Okay. I understand.

19 MR. RYAN: One more?

20 THE COURT: Yeah, I'm not cutting you off. I'm
21 just saying this area is covered.

22 MR. RYAN: Okay.

23 BY MR. RYAN:

24 Q And one thing you might do to help a dealer work
25 through that is you might pay the dealer because you're

1 being paid by the vendors. Maybe the vendors and the
2 third-party integrator could pay someone at the dealer to
3 make the program work even better. That's something that
4 you've probably considered in the past, isn't it?

5 A I don't understand how paying the dealer would make
6 the program better.

7 Q Having them hire somebody or having them pay for the
8 person who's got to run off -- Ms. Woods' time each day
9 for an hour to run off those hundred reports.

10 A That wouldn't be very efficient at \$25 a month. I
11 don't know an employee we could hire at those types of
12 numbers and make any kind of margin.

13 Q Now, I wanted to ask you about your conversation
14 with Mr. Schaefer in May of 2015 in which -- I think your
15 testimony is he told you there was an agreement between
16 Reynolds and CDK to put you guys out of business. Is
17 that the essence of your testimony?

18 A That's the essence, yes.

19 Q And in April of 2015, you were in a legal dispute
20 with Reynolds; correct?

21 A We had received the threat of a tortuous
22 interference lawsuit, yes.

23 Q And you had responded to that threat with a letter;
24 correct?

25 A Yes, we had.

1 Q They had lawyers, you had lawyers, and the two sides
2 are gearing up for a fight; correct?

3 A No. There was no fight involved.

4 Q But there was some head butting going on?

5 A No. It was a single response letter from us.

6 Q Okay. So while this is going on, you get a call
7 from Mr. Schaefer in your office; right? In May?

8 A I believe it was actually shortly after our response
9 letter.

10 Q Right. They write to you. You write to them.
11 Mr. Schaefer calls your office.

12 A That sounds correct.

13 Q And he confesses to a conspiracy with CDK.

14 A That wasn't the -- where he started the
15 conversation, but in the course of that conversation
16 that's certainly what he said.

17 Q Okay. And that was a serious threat to you.

18 A Very serious threat.

19 Q And did you send a letter back saying you better
20 stop this conspiracy or I'm going to take action?

21 A No, I did not.

22 Q Did you send a letter to CDK saying I've just been
23 informed of this conspiracy. It is a threat to this
24 business that I love so much and you better cut it out?

25 A I did not.

1 Q Did you go to the United States Justice Department
2 and tell them look, here is this problem?

3 A Yes, I did.

4 Q And did they take action?

5 A I'm -- the Federal Trade Commission does not
6 routinely discuss what actions they're taking or not
7 taking with someone who brings up an issue.

8 Q Did you issue a press release to the industry saying
9 they're in this conspiracy against me?

10 A I did not.

11 Q Okay.

12 A That would not be prudent.

13 Q And then your testimony is -- oh. And you were
14 aware that Mr. Schaefer has filed a declaration denying
15 your version of the conversation; correct?

16 A Mr. Schaefer routinely denies things.

17 Q Okay. And then you had a conversation with a
18 Mr. McCray from CDK a year later; correct? In 2016 at
19 the convention.

20 A Yes, that's correct.

21 Q All right. And you're aware that Mr. McCray has
22 submitted a declaration in this case --

23 A I --

24 Q -- in which he denies --

25 A I did read that one quite closely, yes.

1 Q Okay. And in that one --

2 A Which exhibit?

3 Q If you go to plaintiff's Exhibit 55 in the white
4 book, which has been admitted into evidence, these are
5 the notes of your conversation with Mr. McCray; correct?

6 A Yes.

7 MR. NEMELKA: Your Honor, it's Exhibit 55A that
8 was admitted, not 55.

9 MR. RYAN: I apologize, Your Honor.

10 THE COURT: All right. So what's the status of
11 55? What's the difference?

12 MR. NEMELKA: 55A has the second page that's
13 blank. The other side complained that the metadata shows
14 that it had two pages and so we produced the one that
15 actually had the blank second page for them.

16 THE COURT: All right. Good. So I think 55
17 will do for present purposes.

18 BY MR. RYAN:

19 Q So -- again, so Mr. McCray tells you that, as you
20 understood it, that there's a conspiracy between Reynolds
21 and CDK to put you out of business; right?

22 A That's correct.

23 Q And again, did you send a letter to CDK saying this
24 guy McCray just said this and you better not -- words to
25 this effect -- and you better knock it off?

1 A I did not send a letter, no.

2 Q Did you send a letter to Reynolds saying this is the
3 second time someone has confessed to a conspiracy and you
4 better cut it out? You didn't do that either, did you?

5 A I believe that I did make a phone call to
6 Mr. Schaefer.

7 Q Oh, and you did. And what did you tell
8 Mr. Schaefer?

9 A I talked to him about the fact that Mr. McCray had
10 basically repeated Mr. Schaefer's statements before about
11 the nature of their agreement and I asked him if it was
12 true.

13 Q And what did he say?

14 A He said Reynolds would never conspire with another
15 DMS. That was his statement. I accused him of
16 conspiracy and he denied it.

17 Q So Mr. McCray talks to you. You call Mr. Schaefer
18 and he denies it.

19 A That's correct.

20 Q Okay. And then did you call anyone at CDK?

21 A No.

22 Q Okay. So in your declaration you talk about this
23 conversation; correct?

24 A That's correct.

25 Q I'm talking about the McCray conversation.

1 A That's correct.

2 Q So let me just find it. It's paragraph -- if we
3 look at page nine, paragraphs 48 through 51.

4 MR. RYAN: If we can put plaintiff's Exhibit 55
5 up on the screen. I don't see it there.

6 Q So if you look at paragraph 48, on page nine of your
7 declaration, it says from the second sentence or third
8 sentence "Mr. McCray then told me that CDK and Reynolds
9 had agreed to 'lock you and the other third parties
10 out'." Do you see that?

11 A Yes, I do.

12 Q And there's in the notes -- in the notes there's a
13 reference to that; right? It says "Most of the major DMS
14 companies have agreed to only source data from each other
15 and effectively lock you and the other third parties
16 out"; correct?

17 A That is correct.

18 Q These were notes you took the next morning.

19 A That's correct.

20 Q And as best you can, you took -- you reported
21 exactly what Mr. McCray had said; correct?

22 A Mr. McCray said other things besides this.

23 Q Right. But I'm just on this particular one.

24 A Yes. In the context of what you're talking about,
25 that's exactly what he said.

1 Q All right. And -- but in your declaration, it says
2 "Mr. McCray then told me that CDK and Reynolds had agreed
3 to lock you and the other third parties out." That's not
4 what it says in your notes, is it, sir?

5 A He referred to major DMS providers. I inferred that
6 to be Reynolds and Reynolds because there are only two.

7 Q Right. So what's in your declaration doesn't quite
8 match up with what's in your notes. It's based on your
9 inference subsequently of what he said; right?

10 A His intention was clear. His statement was clear,
11 yes.

12 Q Okay. Thank you. Can you turn to tab 181, please,
13 in the white binder. This is defendants' Exhibit 181.

14 THE COURT: Any objection to defendants' Exhibit
15 181?

16 MR. NEMELKA: No.

17 THE COURT: It's admitted.

18 BY MR. RYAN:

19 Q You've seen this earlier. Can we put 181 up on the
20 screen, please. You've seen this earlier today; correct?

21 A Yes.

22 Q And it was characterized in court as an automatic
23 Authenticom response of yes when queried about whether an
24 authorized user was attempting to sign on to the CDK
25 system; right?

1 A Acting with explicit permission and as the agent of
2 the dealer, yes, we type in yes.

3 Q So you had an automated yes, but certainly you knew
4 that this was in violation of CDK's policies; correct?

5 A I wouldn't characterize it that way, no.

6 Q Just a couple questions on the loan. Your two
7 partners pulled out because they disagreed with the
8 DealerVault strategy; right?

9 A That is correct.

10 Q And they were concerned that might not -- that might
11 cause some consternation in the industry; right?

12 A No. They didn't want to invest the money in the
13 development. We estimated that we were going to spend
14 about \$2 million, and they were both CPAs and very
15 conservative, and to make that kind of investment in the
16 company at that point in time they didn't agree with.

17 Q Thank you.

18 MR. RYAN: Can I have one second, Your Honor?

19 THE COURT: Yes. (pause at 2:39 p.m.)

20 MR. RYAN: Thank you, Mr. Cottrell.

21 THE WITNESS: Thank you.

22 THE COURT: Any cross-examination on behalf of
23 Reynolds?

24

25

CROSS-EXAMINATION

BY MR. ROSS:

Q Good afternoon, Mr. Cottrell. I'm Brian Ross on behalf of Reynolds.

A Good afternoon, Brian.

Q How are you today?

A I've had better days, Brian.

Q Well, we'll try to move through this as expeditiously as we can. I'd really like to focus my questions specifically on Reynolds. I will do my best not to replot ground that Mr. Ryan has already covered, but there may be a little bit of overlap.

A Thank you.

Q As you discussed with Mr. Ryan, Reynolds has been blocking third parties from automated access to their DMS for several years; right?

A Yes, that is my testimony.

Q And that's not just Authenticom, that's all third parties that have attempted to access the Reynolds DMS through automated access.

A Yeah. They effectively enforced everyone out of the market, yes.

Q Well, their blocking of third parties from accessing the DMS through automated means is not -- does not discriminate against Authenticom. They've applied the

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1 same policies to CDK's own subsidiaries in this case as
2 we've talked about.

3 A They have acted as an equal opportunity blocker,
4 yes.

5 Q Okay. Thank you. And that equal opportunity
6 blocking has been increasingly effective from 2009, I
7 think was the first date that you discussed blocking
8 earlier with Mr. Ryan, up to essentially complete
9 blockage in 2013.

10 A No. The blockage of 2013 was not complete at all.
11 It was when they started their most aggressive efforts.

12 Q Okay. Your companies referred to that stage in the
13 blocking as, I think, apocalypse?

14 A That was known as apocalypse, yes.

15 Q All right. So you testified earlier on direct in
16 your discussion with Mr. Nemelka that when it was just
17 Reynolds blocking Authenticom, you could work with that.

18 A That's correct.

19 Q Okay. So as it relates to Reynolds, as I understand
20 what you're asking this Court to do is to prohibit
21 Reynolds from blocking or attempting to block
22 Authenticom's access to its DMS; is that right?

23 A That is correct, yes.

24 Q Okay. So essentially what Authenticom is trying to
25 do here as it relates to Reynolds is to rewind the clock

1 back to the state of play, as it were, as far back as
2 2010; right? That's the last time that you can recall
3 that Reynolds was not effectively blocking Authenticom's
4 access.

5 A That's not how I would characterize it, no.

6 Q Okay. Well, you are certainly asking the Court to
7 prohibit Reynolds from doing something that it has been
8 doing since 2010; correct?

9 A Yes.

10 Q The status quo as it relates to Reynolds from 2010
11 to 2017 has been that Reynolds is actively blocking
12 Authenticom and Authenticom does what it can to get
13 around those blocks; right?

14 A Yes. I would say that's correct, yes.

15 Q I want to move on to a little bit of followup on the
16 Dynamic Reporting process. This is the Reynolds --

17 THE COURT: We know what it is. We've got it.

18 THE WITNESS: I'm familiar.

19 BY MR. ROSS:

20 Q Thank you. The example that Mr. Ryan gave you and
21 that you talked through with Mr. Ryan, the John Eagle
22 dealerships group in Texas, would you agree that that
23 dealership group uses the Dynamic Reporting process and
24 exports its data reports through manual FTP -- this was
25 the manual FTP versus automated FTP that you were

1 discussing with Judge Peterson earlier -- and those
2 reports and data are uploaded to DealerVault for use in
3 syndication to DealerVault and their partners. Do you
4 understand that?

5 A Yes, I do. At that point in time I'd agree with
6 that. I'm not familiar with what's going on today
7 exactly, but based on her declaration, yes, I was clear
8 that's what was going on.

9 Q Okay. You don't have any reason to dispute
10 Ms. Woods' account as of two weeks ago.

11 A Other than -- the fact that they were FTP data, yes.
12 The rest were declaration I might dispute. But they
13 were --

14 Q Do you know Ms. Wood?

15 A I don't.

16 Q The data that is -- let me strike that.

17 Authenticom is paid pulling revenues by its vendor
18 partners for Ms. Woods' dealership roof tops; correct?

19 A Yes, that's correct.

20 Q Okay. So Reynolds is not attempting to prevent
21 Authenticom from collecting revenues as to any
22 dealerships that are willing to use the manual Dynamic
23 Reporting process and upload those reports up to
24 DealerVault, are they?

25 A I can't speak to what their intent was or is. We

1 have had some blocking, although it's been not as
2 significant as the apocalypse of Dynamic Reporting
3 profiles.

4 Q Well, the difference is, Mr. Cottrell, is it not,
5 that Authenticom asks dealers to provide their usernames
6 and passwords so that Authenticom can run automated
7 versions of these Dynamic reports.

8 A We do. Yes, we do.

9 Q And as you understand it, that's what Reynolds
10 objection to; right?

11 A Honestly I believe that Reynolds objects to us being
12 in the space.

13 Q Okay. Well, we will cover that perception with
14 Mr. Schaefer. Let me -- let me see if I can sum up this
15 point: If someone were to say that Reynolds doesn't let
16 its dealers share their data with third parties as a
17 broad matter, that would be incorrect, wouldn't it?

18 A In the -- in the exact context, yes, that would be
19 incorrect. But as a practical statement, that would not
20 be correct and that's not the feeling in the marketplace.

21 Q Mr. Cottrell, let me ask you there's been some
22 discussion this morning about Reynolds using Authenticom
23 to integrate with Reynolds' own dealers. Do you recall
24 that general discussion?

25 A Yes, I do.

1 Q Do you know how many Reynolds dealers are -- to how
2 many Reynolds dealers that statement applies as we sit
3 here today?

4 A As we sit here today I believe it's three.

5 Q Okay. Thank you. Do you know how many CDK dealers
6 Reynolds' applications use Authenticom for?

7 A Somewhere between 50 and 75.

8 Q Okay. Well, if we were to -- if we wanted to verify
9 that, that number would be -- if we looked at your
10 Exhibit 97, which was the large spreadsheet that you went
11 over with Mr. Nemelka --

12 A That would be accurate, yes.

13 Q -- we could just look at how many dealers were
14 active as of the most recent date, June 1st?

15 A If that spreadsheet covers up to June 1st, yes.

16 Q If the numbers are what they are.

17 A Yes, absolutely. Absolutely, yes.

18 Q You agree that there are only three Reynolds
19 dealerships to whom this concept applies.

20 A If that's what the spreadsheet says, yes.

21 Q And you said it independently.

22 A I believe that's what it is. I haven't -- I haven't
23 verified it on the spreadsheet.

24 Q Okay. I appreciate that. You also mentioned that
25 Reynolds, certain Reynolds' applications use Authenticom

1 to pull data from other DMSs, i.e., not CDK or Reynolds
2 but other dealers.

3 A That's correct.

4 Q But of course those DMSs don't have the same
5 contractual provisions with their dealers that we've been
6 discussing here today, do they?

7 A No. We work collaboratively with them.

8 Q So for purposes of this proceeding, those
9 dealerships are really neither here nor there.

10 MR. NEMELKA: Objection.

11 THE COURT: Overruled.

12 MR. ROSS: I'll --

13 THE COURT: It characterizes the -- it's a
14 better argument than a question. But it's overruled.

15 MR. ROSS: Fair enough.

16 BY MR. ROSS:

17 Q Do you understand that this is -- that Reynolds very
18 limited use of Authenticom for its own dealerships is a
19 practice that it is trying to maintain or increase? Or
20 is it a practice that they are winding down as we sit
21 here?

22 A They have been decreasing. There was a precipitous
23 dropoff first quarter of 2015 when they entered into
24 their agreement with the CDK. It's pretty much leveled
25 off since six months ago, I believe, or a few months ago.

1 Q Do you not or are you not aware that Reynolds does
2 this with respect to applications that it acquires that
3 have Legacy arrangements with Authenticom?

4 A Yes. I'm aware of that, yes.

5 Q And it makes sense, right, that Reynolds may not
6 immediately the first day after it acquires a company cut
7 off its access and immediately stop functionality.
8 That's a rational, prudent step by an application owner,
9 is it not?

10 A Within the first day, yes, I would agree with you.
11 I would agree with that statement.

12 Q There were some discussions earlier about exemptions
13 of user ID for the Penske dealership group. Do you
14 recall that exchange?

15 A I do. I do.

16 Q Could -- I don't think we have this exhibit up on
17 the screen because we were just handed it during the
18 examination. Yes --

19 A I have it here, yes.

20 Q Do you have 159 in front of you? Mr. Cottrell,
21 first of all, Exhibit 159 does not -- is not copied to
22 anybody at Reynolds, is it?

23 THE COURT: 151 you're talking about?

24 MR. ROSS: Plaintiff's 159, Your Honor.

25 THE WITNESS: Based on the email chain from the

1 first page -- I mean I'd have to scan the entire
2 document. But I do not see any Reynolds employees, just
3 Penske employees, including their CTO and myself, my COO,
4 and one of our lead tech people.

5 BY MR. ROSS:

6 Q Sure. You don't have visibility, do you,
7 Mr. Cottrell, to what the Penske group tells Reynolds and
8 Reynolds that it needs any given user ID for, do you?

9 A Restate the question, please.

10 Q Sure. This email does not -- does not demonstrate
11 anything about what Reynolds was told regarding these
12 three Parts I user IDs, does it?

13 A I believe that through discovery we're going to find
14 those. I'm sure they exist. This particular email does
15 not exist any Reynolds employees on that.

16 Q I think the answer to my question was yes, you're
17 hoping to find some documents that --

18 A I'm quite certain they're there. I mean this is a
19 pretty prevalent process. This is not something that was
20 just thrown together or -- I mean we use it every day.

21 Q Okay. And if you look at what this email actually
22 talks about, these are user IDs that refer to a vendor
23 Parts I?

24 A That's correct.

25 Q Does it say anything about DealerVault or

1 Authenticom in the user?

2 A That's correct.

3 Q And we sometimes see usernames that literally say
4 DealerVault or Authenticom that are set up by dealers;
5 right?

6 A Not so much anymore.

7 Q Okay. Well, we doesn't see it here. There's no way
8 that anybody looking at this username or set of three
9 user names could conclude that this is an Authenticom
10 used username, is there?

11 A It's my understanding that that's -- just the
12 username is not how Reynolds identifies Authenticom or
13 DealerVault utilize usernames and passwords. They have a
14 pretty sophisticated process as far as determining where
15 we're on the system.

16 Q Do you know -- do you know Chuck Williams, who's
17 copied on this email?

18 A I do.

19 Q Do you have any personal knowledge of a conversation
20 or series of conversations that Mr. Williams and
21 Mr. Schaefer had in 2016 regarding potential exemptions
22 for Authenticom?

23 A I have no knowledge of that, no.

24 Q Okay. Thank you, sir. Mr. Ryan touched on this
25 with you a moment ago. But you testified about an

1 alleged conversation with Mr. Schaefer in May of 2015 in
2 which you say that Mr. Schaefer admitted that Reynolds
3 and CDK had entered into an agreement to block out
4 Authenticom. Do you recall that testimony?

5 A I do.

6 Q And then you also testified about a conversation
7 with Mr. McCray 11 months later, in April of 2016, in
8 which Mr. -- we've all heard that testimony --

9 A Yes.

10 Q -- repeatedly. I don't need to revisit it. And
11 then he said you called Mr. Schaefer back and asked him
12 if Mr. Schaefer -- maybe you called him Bob. You may
13 have. I just heard from Mr. McCray that Reynolds and CDK
14 are conspiring with each other; is that true. Do you
15 recall that testimony?

16 A Yes, I do.

17 Q Why would you have to call Mr. Schaefer and ask him
18 if this is true when you say Mr. Schaefer already
19 admitted it 11 months earlier?

20 A Because I hadn't heard it from Mr. McCray.
21 Mr. McCray confirmed it. I was letting Mr. Schaefer know
22 now that I had a second confirmation of that.

23 Q Asking Mr. Schaefer is this still true what you told
24 me 11 months ago?

25 A I was just basically letting him know that I knew,

1 okay, that they were doing that.

2 Q Okay. Well, that's not what you testified to a
3 moment ago, is it?

4 A I think -- can you reask the question? I'm sorry.

5 Q I'll move on, Mr. Cottrell.

6 A Thank you.

7 Q The followup conversation that you now are
8 recounting with Mr. Schaefer, that's not anywhere in
9 either of your declarations, is it?

10 A No, it is not.

11 Q In any event, you do understand that Mr. Schaefer
12 denies that this statement was ever made.

13 A Yes, I do understand that.

14 Q And I think you said a few moments ago that well,
15 Mr. Schaefer denies a lot of things. That was your
16 testimony?

17 A It was.

18 Q Let's just get it out on the table. Are you --
19 you're saying that Mr. Schaefer has lied under oath in
20 his declaration?

21 A I believe Mr. Schaefer has made misstatements under
22 oath in his declaration, yes.

23 Q Well, the Court can judge the credibility when
24 Mr. Schaefer testifies.

25 After this conversation in May of 2014 -- May of

1 2015 in which Mr. Schaefer admitted a conspiracy with
2 CDK, according to your testimony, Mr. Cottrell, you did
3 not file a lawsuit until two years later; is that right?

4 A I'm sorry, give me the dates again.

5 Q The dates of the conversation as relayed by your
6 testimony was May of 2015.

7 A Correct.

8 Q You filed the lawsuit in May of 2017.

9 A That's correct.

10 Q So two years pass. You don't seek any sort of
11 judicial relief from this admitted conspiracy that you
12 learned about in 2015 -- May of 2015.

13 A Right. We filed in May of 2017; that's correct.

14 Q Okay. Fair enough. In early 2016, which is several
15 months after you've learned of what you contend here is a
16 conspiracy, isn't it true that you had a number of
17 cordial conversations and emails with Mr. Schaefer about
18 your requests for Dynamic Reporting to be more
19 prominently displayed on Reynolds' website?

20 A Mr. Schaefer -- folks at Reynolds had canceled all
21 of their data-pulling services. We effectively turned
22 off all their feeds. And Mr. Schaefer had Mr. Wunderly
23 (ph) contact me, rather abruptly, asking us to turn those
24 feeds back on; okay? In making that request, my
25 conversation with Mr. Schaefer was I'd love to

1 accommodate you, but -- and he said "What's it going to
2 cost me?" And I said "We don't raise our prices, Bob.
3 You know that about us. But I will ask a favor." And at
4 that point we entered into a conversation with Dynamic
5 Reporting. Dynamic Reporting at that point in time was
6 behind the scenes. It was something that was not
7 prominent and forefront in the marketplace. So what we
8 asked Mr. Schaefer to do was to take it on and put the
9 Dynamic Reporting process on the front side of their
10 website that was accessible to the public, yes.

11 Q And they did that; correct?

12 A They did do that reluctantly, yes.

13 Q And you were happy about that; right?

14 A Yes, I was.

15 Q Because Authenticom likes Dynamic Reporting. It is
16 a good solution to provide data to DealerVault; right?

17 A It provided us a survival. It's not a good
18 solution.

19 Q Well, Mr. Cottrell, you've said in your declaration
20 that out of the 11,000 dealerships that you serve, 10,900
21 of them can get by with daily batch data; right?

22 A That's correct. That doesn't make Dynamic Reporting
23 a good solution.

24 Q Well, we've seen that if dealers are willing to
25 spend a modicum of time entering in their reports or

1 scheduling their reports, that that solution worked
2 perfectly fine for their needs and they don't have to pay
3 Reynolds anything extra, do they?

4 MR. NEMELKA: Objection. Foundation. Still
5 argumentative.

6 THE COURT: Overruled.

7 THE WITNESS: Yeah, I wouldn't characterize it
8 that way at all. No, I would not. I would not agree
9 with you.

10 MR. RYAN: Okay. Well --

11 THE COURT: Is daily batch -- what did you call
12 it? Daily batch data? Daily bath downloading? Is that
13 the same as the Dynamic Reporting we're talking about?

14 THE WITNESS: I believe what he's referring to
15 is on the John Wood example was where a dealer sends us a
16 daily batch file that's processed through the Dynamic
17 Reporting tool, yes.

18 THE COURT: Okay. So that's what -- so that's
19 -- supposedly that's in your declaration where you said
20 10,900 of your dealers could get by with daily batch
21 data?

22 THE WITNESS: What's in the declaration is that
23 10,900 of our dealers we pull at night. There is less
24 than 100 dealers where we're pulling data throughout the
25 day. We pull things like open repair orders, service

1 appointments, things like that which are very, very small
2 amounts.

3 THE COURT: Those you do during the day.

4 THE WITNESS: Yeah. That was that point of that
5 part of the declaration; not that Dynamic Reporting was a
6 viable tool for batch data processing.

7 BY MR. ROSS:

8 Q Well, I mean I don't mean to quibble, but you have
9 acknowledged that dealers use that reporting function to
10 send back data to Authenticom; right?

11 THE COURT: No. We really did cover this pretty
12 well, even with some of my questions. So unless you have
13 something new to bring out here, I think we've covered
14 it.

15 MR. ROSS: Nothing new. I just wanted to make
16 sure Mr. Cottrell is not walking back from his earlier
17 testimony.

18 THE WITNESS: I am not.

19 MR. RYAN: Okay.

20 THE COURT: I understand what he's saying.

21 BY MR. ROSS:

22 Q There is no -- Reynolds has no technical restriction
23 on dealers' ability to use the Dynamic Reporting function
24 and share their data with third parties.

25 A I'm not aware of technical restrictions, but

1 functional restrictions, yes.

2 THE COURT: What are the functional
3 restrictions? Are you just talking about how difficult
4 it is --

5 THE WITNESS: It's very difficult.

6 THE COURT: I think I got it. Just as a
7 practical matter, it's faster. Got it.

8 MR. RYAN: We'll pass the witness, Your Honor.

9 THE COURT: All right. Very good. Redirect?

10 MR. NEMELKA: We don't have any redirect, Your
11 Honor.

12 THE COURT: Very good. Mr. Cottrell, you're
13 done for the day anyway. Thank you.

14 (Witness excused at 3:02 p.m.)

15 THE COURT: Next witness.

16 MR. NEMELKA: Your Honor, plaintiffs call our
17 security expert Peter Swire.

18 **PETER SWIRE, PLAINTIFF'S WITNESS, SWORN,**

19 MR. SCHWARZ: Could I approach?

20 THE COURT: Yes.

21 DIRECT EXAMINATION

22 BY MR. SCHWARZ:

23 Q Good afternoon, Professor Swire.

24 A Good afternoon.

25 Q Can you please state your full name for the record.

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1 A Peter Putney Swire.

2 Q And what's your educational background?

3 A I undergrad, I was --

4 THE COURT: You can be very brief on this.

5 THE WITNESS: Sure.

6 THE COURT: Are you going to object to his
7 qualifications?

8 MR. WILKINSON: No.

9 THE COURT: All right. Then just give me the
10 briefest of thumbnail sketches.

11 MR. SCHWARZ: Absolutely.

12 BY MR. SCHWARZ:

13 Q Professor Swire, can you advise the Court where you
14 currently are employed?

15 A I'm currently a professor at Georgia Tech. I teach
16 cybersecurity and privacy there, among other topics.

17 Q Okay. For how long have you been a professor?

18 A I became a professor in 1990. As a law professor I
19 came to Georgia Tech in 2013.

20 THE COURT: Just give me your elevator pitch on
21 why you should be an expert in this case.

22 THE WITNESS: I think -- I've been working on
23 privacy and cybersecurity since the mid-1990s. Under
24 President Clinton, I was brought in as Chief Counselor
25 for Privacy to be the privacy lead for the U.S.

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1 government. Under President Obama after the Snowden
2 stuff happened, I was one of five people named to the
3 review group of what to do with the NSA, along with Cass
4 Sunstein, Geoffrey Stone, and two other people. I write
5 the textbooks for privacy.

6 THE COURT: Cass Sustein isn't a technical kind
7 of person.

8 THE WITNESS: No. They wanted some technical
9 people to help him with his constitutional theory. And I
10 write the textbook -- if you get certified as a privacy
11 expert in the United States, I write the textbook for
12 that. Thousands of people have taken the test.

13 THE COURT: All right. Very good. Okay.

14 MR. SCHWARZ: If we're going to do this
15 formally, we offer Professor Peter Swires as an expert in
16 information --

17 THE COURT: I don't really certify the experts.
18 Unless they object -- they missed their chance already,
19 if they object. So he's an expert. Let's find out if
20 he's got anything useful to say.

21 THE WITNESS: I'll try.

22 BY MR. SCHWARZ:

23 Q Professional Swire, what did Authenticom engage you
24 to do in this matter?

25 A They asked me to review cybersecurity practices with

1 relation to Authenticom and the two defendants.

2 Q And have you reached any opinions?

3 A I have.

4 Q And how did you reach those opinions?

5 A I read a variety of documents that are listed in my
6 declarations. I interviewed Mr. Cottrell and other
7 people for Authenticom; reviewed some public record
8 materials.

9 Q And have you prepared some slides to use with your
10 testimony?

11 A Yes, I have.

12 Q They should be at the front of your book. In front
13 of everyone's book. Are these the slides you created?

14 A Yes.

15 Q What's on the first slide?

16 A The first slide shows a summary opinion of my
17 testimony which --

18 Q I was just going to ask what opinion you reached.

19 A That CDK and Reynolds per se blocking of Authenticom
20 and other data integration firms is not reasonably
21 necessary to ensure the privacy and security of the car
22 dealer data.

23 Q Okay. Can you turn to the second slide. And what
24 is represented here?

25 A Three key reasons to support the overall opinion.

1 Q Okay. And can you talk through your key opinions to
2 the Court?

3 A Sure. The first one is, and it's been talked about
4 extensively today, that the ownership of the data is with
5 the car dealers. The car dealers have control over that
6 data. They have affirmatively consented to the data
7 integrator, such as Authenticom, using that data.

8 The second point is that data integrators are
9 pervasive and essential in other industries, notably
10 health care and financial services which are very
11 sensitive. So it's a widely known phenomenon that we're
12 talking about here.

13 And the third one is other materials I've reviewed,
14 notably the details of Authenticom's security practices,
15 indicate there's no reasonable basis in security or
16 privacy for this wholesale or per se ban on outside data
17 integrators in the car dealer industry.

18 Q Professor Swire, have you reviewed the report
19 submitted by defense experts Mr. Rosenbach and
20 Dr. Schneck?

21 A Yes.

22 Q Did those reports cause you to alter your opinion in
23 any way?

24 A They did not.

25 Q If we could turn to slide 3, I'd like to walk

1 through in more substance the overall basis for your
2 opinion. You mentioned that Authenticom has permission
3 to use the data at issue. As you understand it, what
4 data is at issue?

5 A So the car dealers have two kinds of data the way I
6 think about it. The first is consumer data. Individuals
7 choose to go to the car dealer. They give their name and
8 address and contact information.

9 And then a second thing is car dealer data about
10 their own business operations. That includes things
11 we've talked about all day today: Inventory, service and
12 sales.

13 Q And as you understand it, who gives Authenticom
14 permission to access this data?

15 A Well, so the dealer provides permission.

16 Q And why are car dealerships able to grant that
17 permission?

18 A The basic idea is consumers have chosen the car
19 dealer. They've shared their data with the car dealer.
20 The car dealer is doing its business. The car dealer has
21 control over how the data about its business is used.

22 Q And what about for consumer data?

23 A For consumer data, there's been a direct
24 relationship between the consumer and the car dealer.
25 It's what's called in the privacy world a first-party

1 relationship. The consumer chose to come to this dealer.
2 And then the dealers safeguard that and do their business
3 operations.

4 Q Based on your review of the materials for this case,
5 is there a practice concerning who controls consumer and
6 dealership data?

7 A Yes.

8 Q And can you please explain?

9 A Well, it has to do with this first-party idea.
10 Consumers choice a bank or a hospital or a car dealer,
11 then that's the organization that has the principal
12 control over the individual consumer's data. And so the
13 focus of privacy regulation, the focus of attention is
14 whether that party the consumer chose is acting properly
15 with the data.

16 Q Can you turn to slide 4?

17 A Yes.

18 Q What is shown here?

19 A What's shown here is a series of quotes, some of
20 which have come up earlier today, about statements by
21 people from Reynolds and CDK about the dealer control
22 over the data.

23 Q So Professor -- sorry. Mr. Rosenbach in his
24 declaration expresses an opinion that Authenticom's
25 activities and requested access violate access control

1 principles. Do you agree with that assertion?

2 A No.

3 Q Why not?

4 A The dealer, who I've just said is at the center of
5 the decisions about how the data is used here, the dealer
6 chooses to do business with Authenticom. The dealer, as
7 you saw with DealerVault, goes into a lot of details
8 about what exactly they're going to do in terms of
9 sharing the data. And that kind of very clear consent by
10 the dealer for Authenticom to act on their behalf is the
11 correct kind of access controls.

12 Q You referenced earlier first parties and third
13 parties as a framework. Where does that framework come
14 from?

15 A One place it comes from is the Federal Trade
16 Commission, which has written about this extensively and
17 then they do their regulation of privacy in
18 cybersecurity.

19 Q Between the first and the third party within the FTC
20 framework, which of those provides access controls?

21 A Well, if the dealer is the one in control of the
22 data, which is the idea in the first party, then the
23 dealer would be the one deciding where the data goes
24 after that and would need decisions about which third
25 parties might get the data.

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1 Q Can you turn to slide 5?

2 A Yes.

3 Q And what is shown here?

4 A This is a diagram that shows the family on the left
5 going to the car dealership in the middle. That's the
6 first-party relationship, the consumer has decided to go
7 with the dealer. And then the arrows on the right show
8 that the dealer decides to do some other things with the
9 data. It might hire a data integrator such as
10 Authenticom. It might hire a DMS provider such as CDK or
11 Reynolds and Reynolds.

12 Q And from a privacy law perspective, do third parties
13 get to dictate to the first party who else the first
14 party shares data with?

15 A No. That's not the way it typically works.

16 Q All right. And from a privacy law perspective, are
17 DMS providers here, third parties, able to decide who can
18 access data on the dealer's behalf?

19 A The dealer would be the one who ordinarily have the
20 control over deciding who gets to have access to it.

21 Q Professor Swire, if you can turn to tab 3 in your
22 binder. This is PX 28, which has already been admitted.

23 A Yes.

24 Q And you recognize this document?

25 A Yes.

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1 Q These are the terms and conditions for DealerVault.
2 What do you understand DealerVault to be?

3 A DealerVault is a software program that we saw
4 demonstrated today that's operated by Authenticom.

5 Q If I could direct your attention to Section 3.4.

6 A 3.4, okay.

7 Q Which is on page 5 of 15.

8 A Yes.

9 Q And can you read the first sentence there after "Use
10 and Data Limitations"?

11 A Yes. "DealerVault shall only extract the dealership
12 data that the dealership permits DealerVault to extract."

13 Q And what do you understand that sentence to mean?

14 A I understand that to be a situation where the
15 dealership is exercising control and decides exactly what
16 data it's going to allow Authenticom to get.

17 Q And based on your experience in privacy law, are
18 there any best practices for privacy and security with
19 respect to gaining permission to access data?

20 A Yes.

21 Q And what is the source of these best practices?

22 A The source comes -- the strict practices that are
23 the highest level comes from law such as HIPAA, the
24 medical privacy rule, Gramm-Leach-Bliley, wiretap law,
25 and in Europe they have strict laws on privacy also.

1 Q All right. Could you turn to slide 6. And at the
2 -- in the top box what's represented here?

3 A The top box gives -- makes the point I was beginning
4 to make which is that a best practice for sharing of
5 data, the sort of gold standard, is if the dealer or the
6 person who has control is freely given consent;
7 affirmative consent, not a knockdown; specific consent,
8 data field by data field; and informed consent. They
9 realize who they're dealing with.

10 Q And how does the permission in the DealerVault terms
11 and conditions compare to the best practices as you
12 understand them for privacy and security?

13 A It meets the strict practices of the highest level
14 statutory protections for HIPAA in Europe.

15 Q Are you familiar, Professor Swire, with the concept
16 data transparency?

17 A Yes.

18 Q What is data transparency?

19 A Data transparency, as it's being used in this case,
20 is the idea that the entity or individual who is trying
21 to make decisions about data would know where the data is
22 going to go.

23 Q And were you in the courtroom earlier this morning
24 when Mr. Nemelka and Mr. Cottrell gave a demonstration of
25 the DealerVault product?

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1 A Yes.

2 Q What did that demonstration show as far as dealer
3 transparency?

4 A It showed very good data transparency field by
5 field, vendor by vendor. Clear indications by reports of
6 how the data is being used.

7 Q Now, can -- as you understand it, can the DMS
8 provider see what data is going to what vendors?

9 A For data that goes from a dealer to Authenticom, the
10 DMS provider would not necessarily know how the data is
11 moving from the dealer to DealerVault to a vendor.

12 Q And from a privacy law perspective does that matter?

13 A In my view, no, because it's the dealer that's the
14 center of the analysis and the dealer has given consent.

15 Q Now, in paragraph 23(c) of his declaration, defense
16 expert Mr. Rosenbach also expresses the view that, and
17 I'll quote, "Authenticom's activities and requested
18 access undermine data transparency and auditing
19 capabilities." Do you agree about that opinion?

20 A That is not correct in my view in connection with
21 the dealer's transparency.

22 Q Why not?

23 A The dealer has the information we just described
24 that gives it tremendous transparency about where the
25 data from the dealer's business operations is going.

1 Q And Mr. Rosenbach also criticizes Authenticom and
2 asserts that "Authenticom's activities and requested
3 access violate data minimization principles." Do you
4 agree with that assertion?

5 A No.

6 Q What is data minimization?

7 A Data minimization says that you share data in a
8 business relationship only for the purposes of meeting
9 the goals of the transaction. So, for instance, if
10 you're doing an inventory, a vendor relationship, you
11 sent information about inventory. You don't send data
12 about employee records.

13 Q Does DealerVault satisfy that principle?

14 A The ability to go field by field is exactly the
15 thing that allows data minimization and only the
16 affirmative fields chosen by the dealer as the data go on
17 to the vendor.

18 THE COURT: But isn't the problem that we're
19 talking about here is that data vault (sic) is kind of an
20 accumulating thing. So you have the need to pass the
21 information on to a vendor for a particular transaction
22 while you've got some inventory, but DealerVault is doing
23 this constantly. So over a period of time, you've
24 accumulated a huge amount of information and you keep it
25 for a long amount of time, more than is really needed for

1 transaction with the vendor.

2 THE WITNESS: My understanding is that the data
3 is kept by DealerVault pursuant to a particular do this
4 for a vendor. And that the history files, as I
5 understood it, are often for three years and the data
6 that's being pulled is minimized so that only the things
7 from a particular dealership the dealership has asked for
8 are being pulled. So I'm not clear where the sort of
9 excess data is. Maybe if there's further questions, I
10 could try to --

11 THE COURT: You're kind of anticipating what I'm
12 -- what I think the defendants' perspective on it, which
13 is that it used to be you just pass the data along to the
14 vendors, but now you keep it in this vault.

15 THE WITNESS: Well, a vault is a pretty good
16 place to keep things compared to other places.

17 THE COURT: It's safety, but it's not
18 minimizing, I guess, is the point.

19 THE WITNESS: So minimizing doesn't mean we only
20 use a little data. We live in an economy that uses data
21 for a lot of things. Hospital records have a lot of
22 data. Data minimization, the idea is you transfer it
23 from A to B for a purpose and it's only the data for that
24 purpose. And so the data minimization here is the dealer
25 might have the ability to get all this data over here if

1 the dealer manager decided to get it. The specific data
2 fields that are relevant to a vendor is what goes to
3 Authenticom. So it's minimized compared to what the
4 dealer could have gotten itself, only the things from the
5 seven buckets, I guess, that Authenticom sells. Only
6 those fields, and carefully excluding other fields, go to
7 Authenticom.

8 THE COURT: All right.

9 BY MR. SCHWARZ:

10 Q So let me try to hit this another way. If a dealer
11 has ten vendors that can send data, data minimization
12 principles dictate that the data sent to each individual
13 vendor is limited in what way?

14 A So that's right. So the vendor would get the fields
15 that are relevant to that vendor. They wouldn't get the
16 fields relevant to vendors over there that aren't part of
17 their business.

18 Q Okay. And for DealerVault to be able to satisfy
19 each of the ten vendors who each need a different piece
20 of data, what does DealerVault need to collect?

21 A So in order to meet the ten contracts, it needs to
22 pull the data fields that -- all the data fields that go
23 into any one of the ten contracts with the vendors.

24 Q Okay. So DealerVault may be at the center of the
25 circle and spokes going to vendors with just the minimal

1 data that they need.

2 A The vendors get exactly the data that the vendors
3 need. DealerVault get exactly the data for the contracts
4 the dealer has signed with those ten vendors.

5 Q And Mr. Rosenbach also criticized Authenticom for
6 decreasing the accountability of data handlers, which I
7 understand to be vendors. Do you agree with that
8 assertion?

9 A No.

10 Q Why not?

11 A The key parts of accountability, as Mr. Rosenbach
12 and I, I think, agree in terms of theory, is do we have
13 written procedures, do we have confidentiality
14 agreements, do we have requirements to keep the data
15 within the bounds of what's being done for the purpose.
16 And so the contracts here, there's a contract in each
17 instant from the dealer to DealerVault. There's also a
18 contract in each instance from the dealer to the vendor.
19 And the vendor and dealer work out exactly what data is
20 going to go to the vendor through DealerVault. The point
21 being there's a written record, there's a series of
22 contracts, there's a series of promises, and so is
23 accountability in the sense that everybody is tied up in
24 the contract and has to handle the data properly.

25 Q In the course of preparing your declarations, were

1 you able to review contracts between Authenticom and the
2 vendors?

3 A Yes.

4 Q And do Authenticom's contract with its vendors limit
5 the vendors' uses of data?

6 A Yes. It limits reuse. It says the data has to be
7 returned or destroyed when a contract term is up. It
8 sets the purpose limits only for the purposes of the
9 dealer's contract with the vendor.

10 Q Switching topics. Professor Swire, are you aware of
11 any other sectors in which companies chosen by a consumer
12 grant an intermediary or a data integrator access to data
13 about the consumer?

14 A Yes.

15 Q In your experience how common is it for data
16 intermediaries to be used in other sectors?

17 A Extremely common.

18 Q Can you identified some of the more important
19 industries where data intermediaries are used?

20 A My declaration talked about the health care
21 industry. So in health care, HIPAA covers hospitals and
22 other providers, and it also covers what are called
23 health care clearinghouses. And a health care
24 clearinghouse is exactly a data integrator. So, for
25 instance, a number of doctors' offices might send their

1 data to the health care clearinghouse. The health care
2 clearinghouse puts it in standard format, cleans up the
3 data, and then submits the claims, for instance, to
4 Medicare, Medicaid or an insurance company. So that's a
5 data integration or function by these health care
6 clearinghouses. They're specifically contemplated in
7 HIPAA as part of how the system works.

8 Q When you refer to HIPAA, are you referring to HIPAA
9 the statute or HIPAA the privacy rule?

10 A I'm referring to the HIPAA privacy and security
11 rules.

12 Q Do you have any experience with the HIPAA privacy
13 and security rules?

14 A Yes.

15 Q Can you describe your experience for the Court?

16 A I was the White House coordinator for the HIPAA
17 proposed rule in 1999. We got 50,000 public comments.
18 And I was the HIPAA coordinator or the White House
19 coordinator for the final rule in 2000.

20 Q What exactly does the HIPAA privacy rule do?

21 A What does it do. It provides a comprehensive set of
22 rules and requirements for covered entities to handle
23 patient data carefully.

24 Q Can we turn to slide 7. What does slide 7 show?

25 A This puts more detail on the health care sector and

1 how they're sharing with third parties even this very
2 confidential health care information.

3 Q And you indicated that the HIPAA privacy rules
4 specifically addresses data sharing with third-parties.
5 Can you explain how it does that?

6 A Well, I've talked with health care clearinghouses,
7 which are specifically a data integration function that's
8 widely used in the industry. And then the other thing in
9 HIPAA is what are called business associate contracts.
10 So there's a hospital that's trying to provide health
11 care. It contracts with various entities that need
12 access to the data. The cafeteria company needs to know
13 who has low salt diets. Maybe the hospital has a IT
14 company to back up and do the computer records for the
15 hospital. But those are business associate contracts.
16 They're very widely used.

17 Q And does the HIPAA privacy rule permit or prohibit
18 the use of business associates?

19 A It recognizes them as an essential part of the
20 industry.

21 Q And are they significant to the industry?

22 A They are very significant. There's more than 2
23 million covered entities in the United States. There's
24 many, many more millions than that, business associate
25 contracts in the United States.

1 Q And what type of data is shared with intermediaries
2 in the health care industry?

3 A The payment records and also clinical records.

4 Q In your opinion, how does the sensitivity of the
5 data provided to clearinghouses and business associates
6 in the health care industry compare to the data that's at
7 issue for car dealerships?

8 A Much more sensitive.

9 Q And why is that?

10 A Why is that. Well health care information has
11 been -- the Hippocratic oath goes back millennia and it
12 has a requirement of confidentiality with health care
13 data. People can be denied insurance or have all sorts
14 of consequences of embarrassment and other things if
15 their medical records, their psychiatric records were
16 released to other people.

17 Q Let's turn to the financial industry, which is
18 another that you mentioned. Do you have any experience
19 with respect to the privacy rules that govern financial
20 institutions?

21 A Yes.

22 Q Can you describe that experience to the Court?

23 A Yeah. So Gramm-Leach-Bliley, the law that we're
24 under now, was passed in 1999. I was in the White House
25 as the bill was being passed. And there was a

1 rule-writing committee and I was the White House person
2 with the Federal Reserve, the banking agencies, to write
3 the Gramm-Leach-Bliley privacy rule.

4 Q And what exactly is Gramm-Leach-Bliley or GLB?

5 A It's the name of the statute passed in 1999. It's a
6 very long statute that does a lot of different things,
7 but in Title V of it sets forth privacy and security
8 safeguards.

9 Q And does it address data sharing with third parties?

10 A Yes.

11 Q Let's turn to slide 8. What does this slide show?

12 A This slide provides information about the financial
13 sector and how data share.

14 Q And you reference here a service provider. What's a
15 service provider under GLBA?

16 A Service provider is the equivalent of business
17 associate contracts. The bank or other financial
18 institution writes contracts with its service providers.

19 Q And are financial institutions permitted to share
20 consumer data with service providers under GLBA?

21 A Yes, they do it routinely.

22 Q What type of data is shared with intermediaries in
23 the financial industry?

24 A Any kind of data held in a bank or other financial
25 institution.

1 Q And are there other ways in which data integrators
2 are used in the financial industry by consumers?

3 A Yes.

4 Q Can you identify some of those?

5 A Yes. So this is companies that are known, such as
6 Mint and Yodlee, that work as data integrators. The
7 simplest way to think about it is if I'm trying to manage
8 my home finances and I have accounts at five or six
9 places, retirement accounts, bank accounts, securities
10 account, I can ask Mint to go and get the data from all
11 of these places so I could have an integrated spreadsheet
12 of my information from these different providers.

13 Q And how does Mint get access to that information?

14 A One way that they do it is through screen scraping,
15 depending on the relationship with the financial
16 institution. But screen scraping would be -- I, as an
17 individual, would give them credentials to get into the
18 bank account. They would then pull the data into the
19 spreadsheet to do what I've asked them to do.

20 Q So a consumer would provide login credentials to
21 Mint or Yodlee which they would then use to --

22 A That's a commonly used part of that industry.

23 Q Okay. I'd like to focus on a couple other areas of
24 disagreement.

25 THE COURT: Before you move on, does it function

1 like it does here? I mean --

2 THE WITNESS: In what respect, sir?

3 THE COURT: Well, so you log on to Mint and
4 you're going to do some work, do you just give your login
5 and password to Mint and they keep it and they use it
6 whenever you tell them you need an update?

7 THE WITNESS: That's one way that it works.
8 There's comments in the record about security problems
9 and security advantages of how that's done. But the
10 consumer does that. One of the security problems there
11 can be that I give access to my bank account and they
12 have access to my full bank account. In dealer involved,
13 it's field by field and limited, so there's controls here
14 in the DealerVault setting that are stricter than the
15 controls we have in the banking sector.

16 THE COURT: Well, they're contractual in nature.

17 THE WITNESS: The DealerVault controls?

18 THE COURT: Yes.

19 THE WITNESS: Well, technical and contractual.
20 The software is written a certain way. There's data
21 fields for some things and not for other things. That's
22 more technical. And contractual would be there's a
23 consent from the dealer to DealerVault to do certain
24 things.

25 THE COURT: And I guess I'm still a little bit

1 surprised that if I -- and I don't use Mint so I'm not
2 speaking of any experience here. But you just give them
3 -- let's say I've got ten different financial accounts.
4 I just give all my logins and credentials to Mint and
5 they --

6 THE WITNESS: Millions of people do it. There
7 are other mechanisms. So with the bigger banks
8 especially, Mint and Yodlee have created APIs. We've
9 heard APIs earlier today. Basically the software
10 handshake. So rather than having me give up my
11 credentials to Mint, if it's working with a particular
12 bank, then I'm -- then Mint pulls it, subject to my
13 authorization in a more security way, which is APIs.

14 THE COURT: So I tell the bank hey, I'm working
15 with Mint --

16 THE WITNESS: Yes. Work with Mint from now on,
17 I'm in for this. Right.

18 THE COURT: Okay. Is that more common?

19 THE WITNESS: It's becoming more common over
20 time. It's up to the banks, just like it would be up to
21 CDK whether they want to provide that kind of
22 functionality. And one thing is that in the banking
23 sector, there's thousands of financial institutions. So
24 writing a contract for Mint to every institution is a
25 very big project and in the absence of that they use

1 screen scraping.

2 THE COURT: All right.

3 BY MR. SCHWARZ:

4 Q Professor Swire, in your opinion is the data that's
5 accessed by DealerVault more or less sensitive than the
6 information used by -- transmitted to data integrators in
7 the health care and financial industries?

8 A The information DealerVault gets is much less
9 sensitive than financial institutions.

10 Q During your tenure as chief counselor of privacy for
11 OMB, did you ever hear anyone suggest that the retail
12 automotive industry held information that was as
13 sensitive as the health care industry?

14 A No.

15 Q Have you ever heard anyone make that suggestion
16 prior to this case?

17 A Not prior to this case.

18 Q Have you ever heard anyone suggest that the retail
19 auto industry information is as sensitive as the
20 information available in the financial industry?

21 A Did you ask financial already?

22 Q I meant health care.

23 A I think -- okay. Neither financial nor health
24 care --

25 Q Sorry.

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1 A Sorry. Financial and health care are routinely
2 understood, as shown by the statutes, to be more
3 sensitive.

4 Q And just if you can explain why you believe in the
5 health care sector that the information is more sensitive
6 than the automotive industry.

7 A Well, the data is more sensitive. Once health care
8 information is disclosed, you can't get it back and it
9 could be any set of things --

10 THE COURT: I think I get the idea.

11 THE WITNESS: That's fine.

12 THE COURT: I don't care if I have cancer more
13 than they care about what kind of tires I have.

14 BY MR. SCHWARZ:

15 Q And what about threat risks? In your opinion, where
16 is the threat risk higher? In the automotive industry or
17 in the health care and finance industry?

18 A Well, in the financial industry, if a bad actor gets
19 into my bank account, they can steal all the money there.
20 So that's a huge problem. Health care, we've had
21 problems, for instance, with ransomware attacks where --
22 ransomware is where the hospital wakes up one day and
23 its entire system has been encrypted and the bad guys are
24 asking for ransom to turn the system back on. The
25 hospital is trying to do the operations and they can't

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1 access the medical records. So that's been a prominent
2 problem in the health care industry recently, subject to
3 ransomware attacks.

4 THE COURT: Those are common. I mean any
5 industry could be subject to that. Where they could have
6 the ransomware --

7 THE WITNESS: That's right. Though if somebody
8 is on the table about to be operated on --

9 THE COURT: I get it. It's more important --
10 it's not life and death, but --

11 THE WITNESS: Also often with ransomware there's
12 some backup available somewhere. And so the
13 inconvenience of my service appointment being two days
14 later, because I get it all from the backup, is different
15 from the real-time problems you have in health care.

16 THE COURT: What about that national critical
17 infrastructure thing that CDK has? I can't remember
18 exactly what it was called.

19 THE WITNESS: Right. I reviewed something
20 called a CRADA that they signed, which was a research
21 agreement between CDK and Homeland Security which was
22 referenced, I believe, in Mr. Rosenbach's thing. So
23 there are thousands -- I looked it up there's more than
24 9,000 CRADAs in existence per year in the United States.
25 And the CRADAs could be Homeland Security thinks this

1 particular partner has something valuable to add. We're
2 going to do a research product together to try to work
3 out something.

4 THE COURT: Okay. All right.

5 BY MR. SCHWARZ:

6 Q Do you have a sense of how many CRADAs there are
7 across the federal government?

8 A As I said, I looked it up last night and it was in
9 excess of 9,000 for 2014. And I believe the CRADA that I
10 reviewed was 2015, so that's roughly the same time.

11 Q Okay. Let's turn to slide 9. This is an excerpt
12 from your reply report. I was hoping you could boil down
13 the syllogism here.

14 A Okay. So steps 1, 2 and 3. Step one is health care
15 and financial is very serious stuff. It's sensitive data
16 and they face high risk. Number 2. The kinds of
17 practices we're seeing here, data integrators and consent
18 given by the individual, are widespread in health care
19 and financial. So it's hard to see how it's okay for
20 health care and finance, but it's way too risky for a
21 retail car.

22 MR. SCHWARZ: No further questions for this
23 witness.

24 THE COURT: All right. Cross-examination.
25

CROSS-EXAMINATION

BY MR. WILKERSON:

Q Good afternoon, Mr. Swire. My name is Brice Wilkinson on behalf of the Reynolds and Reynolds Company. I'll try to use your time efficiently here.

As I understand your opinions, you largely agree with Mr. Rosenbach and Dr. Schneck's stances on cybersecurity, but disagree with them in several regards regarding the facts. Is that a fair summary?

A Yes. We overall agree in theory on what's important.

Q And the facts that you're referring to are primarily about Authenticom's current practices supplied to you by Mr. Cottrell; is that fair?

A That's a big part of what I relied on, yes.

Q You've never investigated the practices of any other data integrators or similar companies, have you?

A Except for my experience over time with health care clearinghouses and things like that.

Q But not in the automotive industry.

A Not in the automotive industry.

Q And your exploration of the facts has been limited primarily to looking at Authenticom's current DealerVault product as it exists today, not as it existed back in 2014 or 2010; is that fair?

PETER SWIRE - CROSS

1 A That's correct.

2 Q So you're not offering any opinions on what risks or
3 effects those other data integrator practices may cause,
4 are you?

5 A So there have been discussions about data
6 integrators who were putting code on CDK's machines and I
7 do see that as highly distinct from the kind of access
8 that Authenticom has.

9 Q Okay. But just to be clear, you're not offering an
10 opinion on sort of other data integrators practices,
11 cybersecurity methods, et cetera.

12 A No.

13 Q Okay. Nor what they may have done in the past.

14 A Correct.

15 Q Okay. Mr. Swire, I guess it was referenced in your
16 PowerPoint and it's also referenced in your report
17 there's a concept of -- you talk about a per se ban --

18 A Yes.

19 Q -- on data; right?

20 A Um-hmm.

21 Q And I think over the course of today, we've had a
22 lot of testimony talking about, for example, Reynolds
23 report generator function. You were here for that
24 testimony; yes?

25 A Yes.

1 Q And you've heard sort of Mr. Cottrell and during the
2 openings talking about how there are ways for dealers to
3 send data to Authenticom independent of Reynolds and CDK
4 systems; right?

5 A I heard that testimony, yes.

6 Q And you don't have any reason to disagree with it,
7 do you?

8 A No.

9 Q No. And so you understand that from Reynolds and
10 CDK's perspective, the dispute is not about dealers
11 sending data to Authenticom, it is about Authenticom
12 accessing their systems. You understand that
13 distinction?

14 A I agree with that.

15 Q Data access and system access; is that fair?

16 A With the automated access that Authenticom uses,
17 yes.

18 Q Right. So when you're talking about a per se ban,
19 what you're talking about is really a per se ban on
20 access to the systems, the dealer systems.

21 A I'm right on this. Automated access of the sort
22 that Authenticom does, yes.

23 Q You understand that that's where the dispute is
24 here.

25 A I agree.

1 Q Okay. You've reviewed some of the Auto Dealer
2 Association's memos and publications in connection with
3 your work in this case; is that right?

4 A Yes.

5 Q Can we pull up -- I think I'm going to use very few
6 documents, so I'll try to skip the binders here. We've
7 got enough of them. Can we pull up defendants' Exhibit
8 15?

9 A Can I find that in a book here?

10 Q I think it should come up on the screen.

11 A Okay. Yes, I see it.

12 Q Okay. You've seen this document before; yes?

13 A The 2013, yes.

14 Q Right. So this is a memo that NADA issued to
15 dealers.

16 A Yes.

17 Q Regarding dealer data guidance; right?

18 A Yes.

19 Q Okay. And turning to Bates label page CDK 320, you
20 see there's a checklist provided here. Exhibit A.

21 A I'm sorry, you're bouncing around.

22 Q Sorry.

23 A So check one completed and no one understand, is
24 that what you're referring to?

25 Q Yes. And at the top it says "Exhibit B - dealer

1 data checklist. Do you recall this portion of the
2 document?

3 A I reviewed it, yes.

4 Q Turning to the next page, you'll see at the top
5 there it says "Consider implementing a strict data push
6 system for sharing data." Do you see that?

7 A Yes.

8 Q And then right underneath that bullet point, there's
9 a second one, that says "This means that you would only
10 share data with third parties by gathering it and sending
11 it to them rather than allowing them to take it by
12 accessing your systems." Do you see that?

13 A Yes.

14 Q So this was NADA's guidance to dealers in 2013.

15 A Right. To consider implementing it.

16 Q To consider implementing it. And that is, in fact,
17 the system what Reynolds and CDK have implemented;
18 correct?

19 A Yes.

20 Q Okay. And you recall that in 2014, NADA issued a
21 similar set of ten steps to dealers where they
22 recommended that the dealers consider implementing this
23 same system.

24 A I've reviewed the document. I haven't memorized it.

25 Q Okay. But you don't have any reason to disagree

1 with that. NADA hasn't changed its mind since 2013.

2 A Not that I'm aware of.

3 Q Okay. One other -- this is just perhaps an
4 elementary point of language. I saw in your report at
5 least once, and I know it's happened in the pleadings,
6 you occasionally refer to it as the dealer's DMS. But
7 you recognize the DMS itself belongs to Reynolds.

8 A The DMS used by a dealer would be a better way to
9 say that. That's what I intended to say.

10 Q It may be used, but it's licensed to the dealer
11 pursuant to a set of contracts with Reynolds or CDK;
12 right?

13 A Correct.

14 Q And Reynolds and CDK are the ones who build and
15 maintain and own these systems; right?

16 A Yes.

17 Q So your view is that even though the DMSs
18 technically belong to Reynolds and CDK, because the
19 dealer's data is in the DMS, the dealer can give, I
20 believe what you called delegated consent for Authenticom
21 and I guess other third parties to come into the system
22 and take that data; is that right?

23 A Right. The dealer would make decisions about who
24 would access the data about the dealer's activities.

25 Q Right. And then they give these third parties

1 ostensibly its permission, its consent -- you talk about
2 consent a fair amount; right?

3 A Yeah. They do it by written contract, yes.

4 Q And you've looked at the DMS contracts, which in
5 turn say that the dealers can't give that kind of
6 consent.

7 A Correct.

8 Q There's not dispute about that; right?

9 A That's what the DMS contracts say, yes.

10 Q So I want to ask you once the dealer's data is in
11 Authenticom system, using that same consent of delegated
12 consent, if the dealer wanted to say okay, I've got a
13 vendor. I'm delegating my consent to that vendor to go
14 in and scrape data out of Authenticom system, could the
15 dealer do that?

16 A Well, let's see. I haven't really thought about
17 that. So what would happen here is the dealer is the one
18 who has control of the data. It's their data. They have
19 the following inventory items. And they have a contract
20 with DealerVault and they have a contract with the
21 vendor. And so pursuant to those two contracts, I don't
22 see a legal bar on the contracts all agreeing that the
23 vendor would have certain kinds of access to Authenticom
24 system.

25 Q So if the dealer wanted to let the vendors come into

1 Authenticom system for free, just like Authenticom does
2 under Reynolds and CDK's, the dealer could do that.

3 A If the contracts of all the parties concerned said
4 it, then they would be the ability to do that, yes.

5 Q Well, I mean you just said it doesn't matter what
6 the DMS contract says with respect to the dealer giving
7 delegated consent to coming into Reynolds' system or
8 CDK's.

9 A And so what I've said in the FTC model I talked
10 about earlier in my direct is the idea that you start
11 with who's in control of the data, is the data about the
12 consumer, is the data about the dealer's dealer activity,
13 and the locus of control in that story is the dealer.
14 And so if the dealer then writes contracts with a vendor
15 and Authenticom in a certain way, the dealer is
16 exercising his control over the data. So that would be
17 consistent with the view of what the dealer's role is.

18 Q I'm not quite sure you understood or answered my
19 question. But let me ask it a little bit differently.

20 A Okay. I tried.

21 Q Authenticom sells access to the data in its system
22 to the vendors; right? That's how Authenticom's business
23 model works.

24 A Right. There's a contract with the dealer. There's
25 a contract with the vendor. When they both say go, then

1 it goes, yes.

2 Q Right. And if the dealer tried to say to the vendor
3 I'm giving you my delegated consent to come into
4 Authenticom system for free, Authenticom would not allow
5 that. Mr. Cottrell said so on the stand just now.

6 MR. NEMELKA: Objection. That's contrary to his
7 testimony.

8 THE COURT: Yeah, I don't know if that was his
9 testimony. Other than ask the question, you don't --

10 BY MR. WILKINSON:

11 Q If the dealer wanted to give delegated consent to a
12 vendor to come into Authenticom system for free and
13 scrape its data out, under your theory it could do so
14 regardless of what its contract with Authenticom says.

15 A In this -- I don't -- that doesn't fit with my
16 theory. Not theory, but the way I think about it is the
17 dealer has the data. The dealer is writing contracts
18 with the vendor and the -- and Authenticom. And I think
19 -- I think that what you're asking gets to the point of
20 why is the dealer different from DMS provider, roughly
21 speaking. And the answer to that is the heart of the
22 dispute that the judge will resolve which is whether the
23 contractual limits in the DMS vendors apply here or
24 whether there's some reason they don't apply.

25 Q I'm asking a slightly different question. I'm

1 asking you why Authenticom is allowed to have a close
2 system and Reynolds and CDK aren't.

3 A Closed system. So what we have here is the
4 Authenticom is acting specifically under the control and
5 direction of the dealer, and when the dealer says do this
6 or do that, Authenticom acts pursuant to that and that's
7 consistent with the data having been entrusted in the
8 dealer by the consumers, for instance.

9 Q Okay. Let's talk briefly about your syllogism if we
10 could. You've analogized Authenticom to -- Authenticom's
11 accessing of Reynolds and CDK systems as being similar to
12 screen scraping that's used in the financial industry in
13 particular; is that right?

14 A Yes.

15 Q Subject to certain distinctions as you laid out
16 earlier.

17 A Correct.

18 Q Are you aware that the European banking federation
19 has officially requested that screen scraping be
20 outlawed?

21 A Yes, several of the world unit.

22 Q And you cite to the CFIB comments -- I'm sorry. You
23 cite to the request for information from the Consumer
24 Finance Protection --

25 A That's correct.

1 Q -- Bureau. I assume you've reviewed the comments
2 that were --

3 A I have reviewed the comments that defendants put in
4 as exhibits.

5 Q Okay. And suffice it to say that there are plenty
6 of banks that have problems with screen scraping; is that
7 a fair statement?

8 A There certainly are, especially in the large banks
9 that have objected to the screen scraping.

10 Q They view it as insecure.

11 A That APIs are better, which I agree with.

12 Q In Reynolds and CDK's view, the RCI Program and the
13 3PA Program are better and more secure. That's our view.
14 You understand that; right?

15 A We're talking about a mechanism for transfer and
16 Reynolds and Reynolds and CDK has not made APIs available
17 to Authenticom that would be more secure than screen
18 scraping.

19 Q Well, you understand that neither of those companies
20 actually have APIs in the sense you're using the term.

21 A I imagine that they have -- I mean this is where the
22 details of Reynolds and Reynolds -- but CDK, for the
23 vendor list and for the data integrators, have similarly
24 transferred data to the DMS and there may well be APIs.
25 I don't know the answer to that.

1 Q Okay. But you'll defer to the technical witnesses
2 from those companies on --

3 A For the details of their system, absolutely.

4 Q Yes. Have you spoken to anyone that's worked for a
5 DMS company recently? In the course of preparing for
6 this case, did you interview anybody that --

7 A I don't believe -- no. No one comes to mind.

8 Q Okay. So your perspective is from Authenticom's
9 sort of --

10 A In my experience in the field for a lot of years,
11 yeah.

12 Q But not from sort of what Reynolds and CDK have seen
13 and experienced internally.

14 A Correct.

15 Q In the health care arena, you talked a little bit
16 about clearinghouses.

17 A Yes.

18 Q Both in your report and today. You talk about them
19 as sort of an example of, I don't want to use the wrong
20 word, you call them data aggregators?

21 A Integrators.

22 Q Integrators. Okay. Now, clearinghouses don't use
23 screen scraping to pull their data; right?

24 A I don't -- I don't know the full range of activities
25 out there, but there's no -- but in many cases they have

1 a direct relationship, for instance, with a doctor's
2 office and then they set up however they set up the
3 access between the doctor's office and the clearinghouse.

4 Q Right. And in the example you describe in your
5 report, the doctor's office, the physicians send or push
6 them the data themselves; right?

7 A Yes. Though it does -- there would be nothing in
8 the structure that would prohibit a pull wherein, for
9 instance, a clearinghouse came in every night and pulled
10 it. I'm not aware right now of what the common practices
11 are with clearinghouses for that.

12 Q Okay. On a high level, Mr. Swire, you don't dispute
13 that the DMS contains sensitive information; is that
14 fair?

15 A I agree with that.

16 Q Okay. And so you are -- obviously you've discussed
17 social security numbers in your reply.

18 A Yes.

19 Q Were you aware that the DMS contains social security
20 numbers at the time you wrote your initial report?

21 A I know -- I heard more details certainly after the
22 initial report as it became a subject of controversy.

23 Q Okay. And your opinion is based on sort of the
24 assumption or the fact that, provided to you by
25 Authenticom, that Authenticom has no access to social

1 security numbers.

2 A I believe there were other things in the record that
3 said the same thing from other sources, but Authenticom
4 is one of those sources, yes.

5 Q And you're not testifying that it would be
6 impossible for Authenticom to gain access to its -- to
7 social security numbers if, for example, it was
8 configured with higher level login credentials.

9 A If it was given administrator login credentials and
10 if it created has data fields it doesn't currently have
11 to accept the data, then there's not a technical barrier
12 to getting it except that my understanding is it's
13 encrypted, that the social security number would still be
14 encrypted that they receive so you wouldn't be able to
15 tell what the social is.

16 Q Right. And you understand that those barriers to,
17 for example, the encryption, those are security measures
18 put in place by Reynolds and CDK.

19 A Yes.

20 Q And so you agree that they should implement strong
21 safeguards to protect that kind of information.

22 A Absolutely.

23 Q Okay. So turning back to sort of the more other
24 categories of consumer information in the DMS; right?
25 When somebody walks into a dealership and hands them

1 their driver's license for a test drive, all that
2 information goes into the DMS; right?

3 A I believe so.

4 Q So that's name, address, date of birth, driver's
5 license number.

6 A Okay.

7 Q And even though those consumers generally don't sign
8 any kind of privacy agreement or policy, your opinion is
9 that information belongs to the dealership at that point.

10 A That the dealership has control over its uses to do
11 the business that it's allowed to do. If the dealership
12 posted that to the internet, I'm not saying that would be
13 okay. I'm just saying the consumer chose the dealership
14 and now there's going to be the business practices of the
15 dealer.

16 Q Absolutely. So you'd agree that if that was posted
17 to the internet, it would harm the consumer; right?

18 A It could, yes.

19 Q And it would be harm -- there would be harm to the
20 dealer too, wouldn't there?

21 A The dealer's reputation for that? Yes.

22 Q And if that information was taken out of the DMS,
23 there would be harm to the DMS provider too. It could
24 suffer the same kinds of --

25 A If it was posted to the internet?

1 Q Yes.

2 A And was trackable to the DMS, then its reputation
3 would be hurt by that, yes.

4 Q Right. And it would potentially face legal
5 consequences, there would be investigation costs, all
6 kind of potential problems.

7 A I agree.

8 Q And you understand these DMSs, a single dealership
9 DMS can contain tens of thousands of customer records;
10 right?

11 A Yes.

12 Q Okay. But you're saying essentially that Reynolds
13 and CDK just need to trust that Authenticom's requested
14 logins won't be the cause of such a breach; right?

15 A Well, there's two layers here. Cybersecurity often
16 has defense and depth. One layer is a technical measure,
17 which is encrypted social security numbers. So if they
18 got breached, under data breach law it's encrypted
19 usually, that's not considered a breach. And then the
20 second is administrative controls, which is if contrary
21 to Authenticom's contracts and contrary to practice in
22 the industry and contrary to the data fields the dealer
23 decided to put the social security numbers into the feed
24 to Authenticom, then that would be -- then Authenticom
25 would get the encrypted social security numbers.

1 MR. WILKERSON: Objection. Nonresponsive. I
2 think I must have posed a poor question.

3 Q I'm sorry. Let me try again. It's my fault.

4 A I'm trying.

5 Q So ignore social security -- set social security
6 numbers aside for a second. Just the data fields that
7 Authenticom has access to.

8 A Okay.

9 Q All right? Authenticom has access and pulls through
10 these logins that it's requesting things like customer
11 names, date of birth, email address, telephone number,
12 driver's license; right?

13 A Yes.

14 Q That's consistent with your understanding. And so
15 Authenticom's logins necessarily have access to those
16 types of information.

17 A Correct.

18 Q And so if one of those logins was used to download
19 50,000 sets of that information and that information
20 ended up on the dark web or wherever, that would
21 constitute serious harm to the DMS provider, wouldn't it?

22 A Serious harm. So I think one of the things here is
23 that the dealership already has individual employees who
24 have access. The administrator has access. They can
25 hire a temp agency that would have its employees have

1 access. And in this case, Authenticom would have access.
2 So if there was data taken out of the DMS and posted to
3 the dark web, whether that's done by a dealer employee
4 who's gone rogue or whether it's being done by
5 Authenticom, that would be a breach of that data,
6 whatever the data is, and there would be whatever harm is
7 associated with that breach.

8 MR. WILKINSON: Pass the witness, Your Honor.

9 THE COURT: All right. Is there other
10 cross-examination here of this witness?

11 MS. MILLER: Just a few questions, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. MILLER:

14 Q Good afternoon. Britt Miller on behalf of CDK.

15 A Good afternoon.

16 Q I just have a few followup questions, if I may. I
17 believe you testified earlier, using your example, that
18 if Authenticom had ten contracts with vendors, that it
19 would only have a need to pull the individual data fields
20 it needs for those ten contracts that it has on behalf of
21 the dealers with those vendors. Did I understand you
22 correctly?

23 A That's my understanding.

24 Q Okay. So it only pulls those. It doesn't pull
25 anything else.

1 A Whatever the dealers have authorized in DealerVault,
2 those data fields are what goes to Authenticom, and under
3 the contract Authenticom and the vendors say they're
4 only -- the vendors will only get the data needed to do
5 the vendor's job.

6 Q Okay. I understand the designation from dealer
7 through DealerVault. I'm talking about the actual pull.
8 So if a dealer has ten contracts with vendors and each
9 vendor needs one piece of data, we'll make this easy for
10 math purposes.

11 A Okay.

12 Q Is Authenticom -- is it your understanding that
13 Authenticom then, because those are the ten contracts
14 that the dealer has, is going to just pull those ten
15 pieces of data from the DMS because those are the ten
16 that have been authorized by those contracts?

17 A So the answer is yes, sort of, and I'm going to try
18 to explain very briefly.

19 Q Please.

20 A So the data that goes into the data fields that
21 Authenticom then uses and sends along to the vendors
22 would be exactly that data. But the way, as I understand
23 the screen scraping working, would be that -- the way I
24 understand is like when you buy an airline ticket online.
25 So I log in and a screen comes up. Then I say I'm going

1 to travel to this city round trip and a screen comes up.
2 Then I'm going to have the return ticket and a screen
3 comes up and I get seats. And that's the script you go
4 through.

5 Now, in the course of that, at the end in the
6 airline world I get an airline ticket with seats. But I
7 will have seen various pages of information that are in
8 the screens as I went along. So Authenticom puts into
9 Authenticom's system, as I understand it, the equivalent
10 of the airline ticket. But the Authenticom script will
11 be viewing, as it were, though it's the machine version,
12 but would be viewing the other thing such as the other
13 cities you might have flown to or the other tickets you
14 might have brought.

15 So there's more information that Authenticom's
16 emulation would view, but the amount that actually that
17 goes into Authenticom's system is the data fields, as I
18 understand it.

19 Q So it may view it, but it is your testimony that it
20 doesn't scrape all of those different views or samples.
21 It doesn't scrape all of the data from those fields, it
22 just scrapes the end field of the plane ticket, just in
23 my example, the ten fields that it needs to fulfill those
24 vendor contracts.

25 A So I don't know exactly when in the process deletion

1 happens of any of that other data, the equivalent of the
2 tickets you didn't buy. So I don't know exactly at the
3 level of software exactly when that's discarded. So I
4 don't know the answer exactly when, but my understanding
5 is the part that's kept in the data field and used for
6 business purposes is under the data fields that were
7 requested.

8 Q Okay. I appreciate that. I'm just trying to
9 understand your understanding of what actually gets
10 scraped. So is it your understanding that they scrape
11 all of those screens and then only put the ten they need
12 in DealerVault and then delete the rest?

13 A This is at a level where I don't know exactly how
14 that works, and Mr. Cottrell or somebody could tell you.

15 Q Okay. In your slide deck that you put up with
16 respect to the summaries of your opinions, one of the
17 slides you put up for the key reasons was a slide -- and
18 I apologize. It's key reason number one: Dealers
19 control the data and give consent, where you have a bunch
20 of pictures of various articles?

21 A Yes.

22 Q Do you remember that one?

23 A Yes.

24 Q I believe the only one that you have on here from an
25 article that you have two CDK documents, one of them is

1 from Steve Anenen and then other is a quote from a CDK
2 Master Services Agreement.

3 A Okay.

4 Q The Steve Anenen quote is the same 2007 quote that
5 Mr. Nemelka referenced in his opening statement. Do you
6 have any statements in the last ten years from CDK
7 expressly endorsing hostile integration or third-party
8 access to data in the way that Authenticom does it?

9 A I don't remember for the balance side what the date
10 is for that.

11 Q Okay. And then --

12 THE COURT: Just for the record, that was slide
13 4 of that slide deck.

14 MS. MILLER: Yes, sir.

15 BY MS. MILLER:

16 Q And then I'd like to have you turn to your slide 5
17 for a moment, your diagram.

18 A Yes.

19 Q And I want to make sure I understand this because
20 this was not how I understood Mr. Cottrell's testimony.
21 It is not that Authenticom is communicating with the
22 dealer and the dealer is then communicating with the DMS
23 provider. In fact, as I understood the testimony, it's
24 Authenticom using dealer credentials to communicate
25 directly with the DMS provider.

1 A So the diagram here shows the contracts that exist.
2 The consumer goes to the dealership; buys a car. The car
3 dealer has a contract with CDK. The car dealer has a
4 contract with Authenticom. When it comes to the actual
5 data going to Authenticom, they use the dealer
6 credentials and into the DMS that way.

7 MS. MILLER: We tender the witness. (3:58 p.m.)

8 THE COURT: All right. Any redirect?

9 MR. SCHWARZ: Yes, just briefly. If you could
10 just keep slide up for a second.

11 REDIRECT EXAMINATION

12 BY MR. SCHWARZ:

13 Q Can you explain the FTC framework set forth in this
14 slide? There seems to be a bit of disconnect.

15 A Right. So for purposes of protecting consumer data,
16 and by the way --

17 THE COURT: I think I get this.

18 THE WITNESS: It could be a hospital or it could
19 be a bank in the middle. That's the simplest --

20 THE COURT: So the FTC framework isn't really
21 about the contractual relationships as they might exist
22 among the parties, it's just the framework that the FTC
23 takes is that the entity with the first-party
24 relationship with the consumer is the one that's in the
25 best position to figure out what the consumer wants to

1 happen to his or her information.

2 THE WITNESS: That's consistent with my view.

3 THE COURT: Got it.

4 MR. SCHWARZ: Last question.

5 BY MR. SCHWARZ:

6 Q If we could pull up DX 15, which were the guidelines
7 you were shown real quick. So if you go to the page that
8 you were on which they showed before the checklist which
9 is CDK 321. And you were asked some questions about the
10 top box that said --

11 A Yes.

12 Q -- "Consider implementing a strict data pull system
13 for sharing data." Do you see that?

14 A Yes.

15 Q Could you look at the final bullet that's under
16 that.

17 A It says "If there's no or limited IT staff or
18 expertise, then consider a vendor to help."

19 Q As you understand is Authenticom a vendor?

20 A This is using vendor in a different way than we've
21 used it in the case where the vendor has been the app
22 provider. But in this case, Authenticom would be an
23 example of a contract party with the dealer who's helping
24 the dealer with this. And as I said in my reply
25 declaration, CDK called Authenticom in 2014 or '15 a

1 dealer data security solution. So it's one of the ways
2 that the dealers can have greater discipline about how
3 data is accessed.

4 MR. SCHWARZ: No further questions.

5 THE COURT: Thank you. Thank you, Mr. Swire.

6 (Witness excused 4:00 p.m.)

7 THE COURT: We're at a perfect time to take our
8 afternoon break, so we'll reconvene at 4:15 and then
9 we'll press on until six o'clock.

10 (Recess 4:00-4:17 p.m.)

11 THE CLERK: This Honorable Court is again in
12 session. Please be seated and come to order.

13 MR. SCHWARZ: Your Honor, because of scheduling
14 conflicts and witnesses, we agreed with the defendants
15 that we're going to take some witnesses out of order.

16 THE COURT: Very good.

17 MR. SCHWARZ: So Mr. Rosenbach, who's the
18 defendants' security expert, is going to testify now.
19 Professor Swire has to get out and leave the country;
20 so...

21 THE COURT: All right. Very good.

22 MR. SCHWARZ: Not that that means anything
23 but...

24 THE COURT: Usually we have people turn over
25 their passports to the clerk's office. All right. So

1 we're going to hear a defense witness now; is that right?

2 MR. MILLER: Yes.

3 THE COURT: Very good. You can call the
4 witness.

5 MS. MILLER: Your Honor, we call Eric Rosenbach.

6 **ERIC ROSENBAACH, DEFENDANTS' WITNESS, SWORN**

7 DIRECT EXAMINATION

8 BY MS. MILLER:

9 Q Mr. Rosenbach, good afternoon.

10 A Good afternoon.

11 Q As you know, I'm Britt Miller and I represent CDK.
12 For the Court, would you please give me your elevator
13 speech as to your qualifications.

14 A So I first started working on cybersecurity and
15 intelligence issues about 20 years ago. I was an active
16 duty Army intelligence officer working very closely with
17 the National Security Agency, NSA, for five years where
18 basically what I was doing was doing trying to steal
19 people's telephone calls and their emails and figure out
20 how to crack into their systems.

21 After that, in a way that was a little ironic, I was
22 the Chief Security Officer for the largest telecom in
23 Europe where I was charged with defending our networks
24 from all the bad guys getting in for about three years.
25 Several years, you know, I was doing some things related

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1 to cybersecurity, but for the last seven years is what's
2 most pertinent where by the end, I was the chief staff
3 for the Department of Defense, but had also been the
4 cyber czar for the Department of Defense, Assistant
5 Secretary of Defense and Deputy Assistant to the
6 Secretary of Defense.

7 Basically we have three roles in the Department of
8 Defense that I was responsible as it goes to czar cyber.
9 The first is we do things on --

10 THE COURT: I'm going to ask you -- I'm glad to
11 get the elevator pitch, but for the sake of the court
12 reporter slow down just a touch.

13 THE WITNESS: Oh, okay. All right. Three
14 admissions; two don't matter that much for here. One is
15 do an offensive cyber, which is to keep the country safe
16 by going after bad guys offensively. Secondly is defend
17 the nation. That means when people are going after our
18 critical infrastructure, you're finding ways to prevent
19 that from happening. The third, which is probably the
20 most relevant for here, is in charge of defending
21 Department of Defense networks. So we have three million
22 people in the Department, have the largest enterprise
23 network in the world, spend \$37 billion a year on IT
24 because it enables our mission. So we place a very high
25 priority on defending our networks.

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1 As you can imagine, we're also probably the most
2 attacked network in the world because every bad guy in
3 the entire world wants to get into DOD networks, try to
4 do something bad to us, from the Russians, to the
5 Chinese, to the North Koreans, to anarchist-type hackers.

6 THE COURT: Very good.

7 Q And you submitted a declaration in this matter, have
8 you not?

9 A Yes, I have.

10 MS. MILLER: And it's marked, Your Honor, as
11 defendants' Exhibit 125.

12 THE COURT: Very good. I see it.

13 BY MS. MILLER:

14 Q And Mr. Rosenbach, what's your current position?

15 A Right now I'm the codirector for the Belfer Center
16 for Science and International Affairs at the Harvard
17 Kennedy School.

18 Q And what was your assignment in this case?

19 A My assignment in this case was to provide
20 independent advice as related to this case, review all
21 available documents, conduct a lot of interviews, do due
22 diligence, also review the expert testimony of Mr. Swire.

23 Q And what did you do to prepare your declaration?

24 A I went through this in somewhat the same way that I
25 would do to prepare for meetings we have the Secretary of

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1 Defense where we're trying to assess risks to
2 organizations. And so I developed a framework, and then
3 went through multiple interviews with people, and in
4 particular, the technical personnel at both CDK and
5 Reynolds to assess their network architecture and
6 structure. So, for example, you saw a diagram earlier
7 today that had the network architecture on it. Those
8 were one of the first things that we started asking
9 about. They even made some adjustments based on the
10 interviews we had; reviewed multiple documents as
11 identified in the filing, and then did a lot of outside
12 research to just make sure I understood everything that
13 was going on in this vertical sector.

14 Q And you were here to listen to Mr. Swires'
15 testimony, were you not?

16 A I was, yeah.

17 Q And have you done anything since you submitted your
18 declaration in connection with this case in forming your
19 opinions in this matter?

20 A I read the second opinions of Mr. Cottrell and
21 Mr. Swire; did some additional research based on those.

22 Q And in anything that you read or that you have heard
23 since you submitted your declaration change your opinions
24 in any way?

25 A No, it didn't change my opinions.

1 Q Can you give me a basic sense of some of the basic
2 prince of cybersecurity that informed your opinion in
3 this matter?

4 A Right. So when I look at cybersecurity, there are a
5 couple basic things that are really important. First,
6 you start with the network architecture and the way data
7 flows. And the reason you do that is you're trying to
8 build a solid house, if that's the way you want to think
9 about it. And when you're designing your house or your
10 fortress as described earlier today, you want to limit
11 the number of points at which someone can bring in data
12 or ex-fill data. And so I wanted to start -- and that's
13 one of the first principles, that you defend that.

14 The second thing you do is you think about
15 authorized access and how you're going to allow that to
16 happen. Because if you invest a lot of time and money in
17 building a good fort, you want to make sure that the
18 people who are about to come in and out are the right
19 people who are doing the right thing. So that's why you
20 have that type of management.

21 The second thing is I believe transparency is very
22 important. You want to know what's going on in your
23 network. You want to know what's going on with your
24 data. You want to know who is in your network, and you
25 want to know what they're doing to the maximum extent

1 possible. You do that because it's a lot easier to pick
2 out bad guys from good guys and see what data belongs
3 there and what doesn't.

4 And the final thing, which may sound a little bit
5 strange, but it's really important to have a system of
6 education and awareness and training. Because you hear a
7 lot of technical things, but when it comes down to it,
8 the human element to cybersecurity is really the most
9 important and people often will be lazy with their
10 computers and they generally don't like security and
11 they'll try to take shortcuts.

12 So, for example, in the Department of Defense if you
13 did not complete your quarterly cybersecurity training,
14 you could not get on your computer. Another example, the
15 Chairman of the Joint Chiefs of Staff, at the time Marty
16 Dempsey, four-star Army, the Chairman, he wrote a memo to
17 the entire Department of Defense in the uniform military
18 that said if you're a commander and in your unit there's
19 a breach, I'm holding you responsible, because we wanted
20 to raise awareness and the level of education about these
21 issues that people would take this as seriously as they
22 take some of their operational issues.

23 Q And do those cybersecurity principles apply across
24 businesses regardless of the nature of those businesses?

25 A They do, yeah.

1 Q And in your declaration you discuss various
2 industries that you say are targets for cyberattacks.

3 A Right.

4 Q Have you formed any opinion as to whether the auto
5 industry, in which CDK and Reynolds operate, is a target
6 for such an attack?

7 A Yeah. I will admit I did not know a lot about the
8 automotive industry before I started this, in particular
9 about the DMS infrastructure. But if you look side by
10 side at the actual data that is in the financial sector,
11 the health care sector, but in the retail sector in
12 particular, you see many of the same types of data that
13 exist. So, for example, people might be surprised until
14 they actually look at it that when you're talking about
15 the automotive retail sector, dealers have lots of money.
16 They have the ability to cut checks. They have social
17 security numbers. They have payroll. They have driver's
18 license information. Much of that is stored on the DMS.
19 Some of it is not. What I would like to point out though
20 is that a network is connected to other networks.

21 Another maximum cybersecurity is that you try to
22 protect all of your networks because you know they're
23 connected to other things. So just because Authenticom
24 doesn't have access to a certain type of data or other
25 parts of the dealer network, they are connected, and a

1 weakness in one is something that gives a seam that could
2 open up another. And I'll talk with seams a little bit
3 more down the road, but it's a very important thing to
4 keep in mind.

5 Q And have you seen anything in the automotive
6 industry specifically that has given you or led to your
7 opinion as to specifically the automotive industry being
8 a target? Is there any industry guidance or advice that
9 has led you to your opinion?

10 A Yeah. So y'all have heard already today about all
11 the things that were happening in 2013, 2014, 2015. That
12 was a very stressful time in my life because I was over
13 in the White House almost every day when these major
14 breaches were going on, not to mention the Chinese
15 stealing our intellectual property, the Iranians
16 attacking the financial sector, North Koreans trying to
17 take down Sony. That same environment was going on when
18 the auto industry was becoming more modern from a
19 technology perspective; right?

20 So those two things are correlated, and there's also
21 causation from my humble perspective about why those
22 things evolved. So you see during that exact same time
23 frame, the guidance from NADA that was just reviewed
24 saying here are some of the things you should do if
25 you're working with third-party providers and if you're a

1 dealer. So pretty important to keep in mind. If you
2 fast forward to now, all you have to do is read the
3 newspaper or even the last six months, and doing a little
4 research, you see some pretty, I would say, eye-opening
5 things that are going on in the automotive retail sector
6 itself.

7 So you heard about the breach of the one DMS
8 provider where they left some of their data insecure.
9 They were being sloppy. You cannot be sloppy when you're
10 in this business. One small mistake opens up a lot of
11 vulnerabilities. Also you probably saw in the Washington
12 Post this morning a couple weeks ago where I believe
13 accessing a DMS there were some organized criminals that
14 stole the identifying information of keys and then made
15 away with 150 Gs. There are a lot of things happening
16 like this.

17 Even more importantly is what you don't hear but if
18 you talk to experts in the field and you kind of solicit
19 and ask that are even more kind of nerve-wracking. So,
20 for example, when I was doing the interviews to prepare
21 for all of this, both on the CDK and the Reynolds side,
22 they would say now, if you really talk to dealers, and
23 they would never want to say this, you know, in front of
24 the judge, they'll tell you that they're actually the
25 victim of ransomware pretty often. Or that organized

1 crime has figured out that car dealers are actually cash
2 rich, and, without trying to sound condescending,
3 actually have very weak cybersecurity practices for
4 whatever reason; probably because they just haven't been
5 developing it as much, which means that they're
6 vulnerable. And you'll see that people will have bank
7 accounts wiped out or there'll be check fraud because
8 those are all things that are residing within that
9 ecosystem of a dealership.

10 Q And I want to pause for a moment to address two
11 things that the Court has asked about: Specifically the
12 cooperative research and development agreements that CDK
13 has entered, or the CRADAs as Mr. Swire related to, and
14 distinguishing that from the critical national
15 infrastructure, and specifically speak as to what those
16 are as the judge has specifically inquired about them.

17 A Right. Yes, sir. So the CRADA was just one thing.
18 And you hear that there are 9,000 CRADAs. That doesn't
19 actually mean that much. But the CRADA is established by
20 the Department of Homeland Security, and I used to work
21 with the Under Secretary who would make those decisions
22 all the time. They do it in sectors where they know
23 there's a vulnerability and they know there's a threat
24 and they want to try to facilitate helpful research and
25 development in the cyberfield. So it is important.

1 Don't get lost on there being 9,000 because they're
2 trying to designate.

3 More importantly, the sector itself designated
4 itself as critical infrastructure instead of an ISAC.
5 What's an ISAC? That's Information Sharing Analysis
6 Center. That's because all of the dealers and the OEM
7 folks and everyone, they recognize that the threat to the
8 sector is growing. At the same time, automobiles and the
9 dealerships, the need and the technology and the software
10 is developing also very quickly. Rather than be forced
11 to do this by the government or by legislation, they
12 stood up this ISAC by themselves. So it is critical
13 infrastructure and it was self-designated.

14 Q Do you have an opinion as to whether CDK and
15 Reynolds specifically are vulnerable to a cyberattack?

16 A I believe that they are, and, you know, you can get
17 into a little bit of a debate about whether they're more
18 vulnerable or less vulnerable than the financial sector
19 or the health care sector, but here's the way I think
20 about it: You don't actually think about vulnerability,
21 you think about risk. Here's the way I assess risk.
22 Here's the way we assess risk in the Department of
23 Defense when I was talking to the Secretary.

24 First of all, you say do they have information that
25 is valuable and is there someone who would go after that.

1 I believe that when I looked and did research on this
2 sector that that is definitely the case, because you
3 could get money, you could steal social security numbers,
4 you could steal -- remember, even email addresses. There
5 are a lot of nation states that want just that
6 information because they can spearfish the heck out of
7 everyone. And I can tell you a little more about
8 spearfishing down the line.

9 So is there something that's valuable. Second of
10 all, are there people who want to take the valuable
11 stuff? And the answer is yes. It may not be the North
12 Korean cyberoperatives, but it definitely would be
13 cybercriminals. It's the most, I think, lucrative
14 criminal enterprise in the world right now is cybercrime.
15 These people are very smart, they know where the money
16 is, and they know where people are weak.

17 So when you think about risk, the final thing is how
18 well do you defend yourself and how good is your
19 cybersecurity program. That often can be the most
20 determinative aspect of risk. So if other things even
21 we're not that sensitive, if you just take that, but
22 someone has very weak cybersecurity practices, weak
23 cybersecurity program, that's their risk mitigation
24 factor would definitely alter the calculus of that thing.

25 Q Would you say that Authenticom is vulnerable to a

1 cyberattack?

2 A Of course, yes.

3 Q Did you review the architecture of CDK and Reynolds'
4 DMS systems?

5 A I did, yeah, in pretty great detail, and, you know,
6 kudos to the technical staff because they're probably
7 even maybe a little annoyed by the end. I asked them so
8 many questions so many times, so many times over because
9 I really wanted to understand exactly how it was
10 architected, why it had happened that way, and, you know,
11 understand now I think to a pretty strong degree how the
12 networks worked.

13 THE COURT: Can I just ask a point of
14 clarification here?

15 THE WITNESS: Yes, sir.

16 THE COURT: Are you going to talk about how
17 Authenticom is structured? Or is your opinion really
18 more about Reynolds and CDK?

19 THE WITNESS: I definitely know Reynolds and CDK
20 very well. But from what I've learned about Authenticom,
21 I have some, I think, informed opinion and have learned
22 even more today from some of the testimony of the
23 Authenticom people.

24 THE COURT: I just want to clarify something.
25 The question is, as it was pitched to you really, was is

1 CDK and Reynolds vulnerable to cyberattack and you kind
2 of turned it around. Your answer was they're at risk of
3 cyberattack, I think was the way you presented it.

4 THE WITNESS: Yes, sir. I mean they're all --

5 THE COURT: Then when you answered the question
6 about Authenticom, you said yeah, they're vulnerable. So
7 you didn't go into --

8 THE WITNESS: You're right. Sorry.

9 THE COURT: Same thing?

10 THE WITNESS: Same thing. They're all
11 vulnerable and the point where I would distinguish, and I
12 think it is actually more helpful as a metric, is how at
13 risk are they. Because then you would look at those
14 three things, the framework that I propose there to help
15 get a better grasp.

16 THE COURT: So if you say they're vulnerable,
17 I'm expecting you to point out some deficiency on the
18 defense side.

19 THE WITNESS: Yes, sir. I'll do that later.

20 THE COURT: The valuable information is there.
21 There are people who want to get it. And kind of in a
22 sense there's nothing you can do about those two things.

23 THE WITNESS: You're right, yeah.

24 THE COURT: So really the question is how well
25 defended is it.

1 THE WITNESS: That's right.

2 THE COURT: Okay. All right.

3 THE WITNESS: Yes. Absolutely.

4 BY MS. MILLER:

5 Q So let's go there. What is your opinion as to CDK's
6 and Reynolds' perspective approaches to cybersecurity?

7 A I was actually, I very impressed. Again, maybe I
8 was a little surprised that in the automotive retail
9 industry that there is such a level of sophistication.
10 But I went through my framework and I said okay, how have
11 they architected their networks in order to try to
12 mitigate risk? What are the things that they've done?
13 The things that I saw in both cases, but I will make a
14 little bit of a distinction at the end, is that they
15 think very carefully about that in transit. That means
16 that whenever they can, they encrypt it, and if they
17 don't encrypt it, they use something that makes it
18 impenetrable. So there's an MPLS is my statement. It's
19 a special protocol that you use. When data is at rest,
20 it's encrypted. The way the architecture itself is set
21 up means there are very few entry points and they thought
22 consciously about that.

23 Now, I want to point out I think Reynolds has done a
24 better job at this over a longer period of time, and CDK
25 seems to even talk about that this morning too. So when

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1 I talked about the other things, the principles that are
2 important, that close attention to access management is
3 something that is very important. And both of these
4 firms pay close attention to that because again,
5 credentials are the most important thing when it comes to
6 cybersecurity. They are keys to the castle. You can
7 architect it beautifully, but if someone gives you the
8 keys, you can come in.

9 Also I think that both place a pretty high premium
10 on educating both their internal work force and their
11 customers about good cybersecurity practices, placing a
12 premium on it. And again, something that quite frankly I
13 was a little bit surprised to see is that they invest a
14 lot of money in it. Because right now, this is my
15 professional opinion, there's a lot of underinvestment in
16 cybersecurity in the private sector, which is a type of
17 market failure.

18 Q Did you have an opportunity to evaluate both CDK's
19 and Reynolds' third-party partner programs and the
20 security around those programs?

21 A I did. I think I actually spent more time asking
22 about the Third Party Access Programs than anything
23 because it's one of the key issues of the case. And so
24 in both cases, in Reynolds in particular, they've even
25 architected, as you heard earlier about the sandbox, the

1 so-called sandbox, a way that third-party people,
2 third-party vendors -- and I want to be very clear about
3 this: that could include a data integrator, so a
4 third-party could be anyone who is not this -- have
5 access to the data. I did not encounter anything in any
6 of the interviews I did where the reason that they were
7 doing certain security mechanisms was designed to lock a
8 specific type of business or firm out. It was to make
9 sure that people who needed the data had access to it,
10 but that it was done in a very, very secure way.

11 If I could, I'd just like to tell you a little bit
12 about that technically. And I know you hear some
13 technical terms, but the way that they do that is with a
14 specialized software interface. So you've heard the term
15 API. That's essentially what they do. The reason that
16 that is qualitatively better and thus introduced less
17 risk to the firms who were doing it, in this case CDK and
18 Reynolds, is that it's a clean match-up of software as a
19 way to pass the data rather than what is what I call a
20 forced extraction and using screen scraping. Screen
21 scraping is something -- it's very sloppy. It's not very
22 exact. And you end up getting a lot more data than you
23 probably should from my professional perspective.

24 Q In your investigation, did you come across any
25 cybersecurity measures taken by CDK or Reynolds that did

1 not address a legitimate security concern?

2 A No. Everything that I saw made sense to me in the
3 holistic way that they would look at possible threats and
4 their businesses. So again, a really important part of
5 this is when you're a business like CDK or Reynolds and
6 you're the CEO, the most important thing when it comes
7 down to it is you want to make money and you want to have
8 a good relationship with your customers, but you can't be
9 so secure that you totally lockdown the firm and you
10 don't make any money because you're super secure but
11 there's nothing going on. So you have to make decisions
12 based on risk. Again, it comes down to that. You say
13 well, we're going to invest a certain amount of money
14 because it mitigates this risk and it fits within the
15 overall business case. So everything I saw from my
16 perspective made sense, in particular knowing all the bad
17 things that had happened in 2013 to '15 period, to ramp
18 up their security, build a more secure architecture, and
19 also address the fact that in order to be successful,
20 they need to have third-party vendors access the data.
21 They're more successful the more people access the data.
22 So it's a major point where they had to balance risk as
23 opposed to the business opportunity.

24 Q Is it fair to say that you disagree with Mr. Swire
25 about whether CDK and Reynolds are justified in

1 limiting third-party access to their DMS?

2 A Yeah. I completely disagree with that. It's very
3 clear that the decision they make to block access by
4 Authenticom is a security business decision and nothing
5 else. The idea that it's a per se blockage to me, I saw
6 no evidence of that. I saw lots of evidence of sloppy
7 security practices by Authenticom, which I think is a
8 great firm and seems to have great people, but they're
9 sloppy in some of their security stuff. And when you see
10 that and, you know, it means risk to your firm, I think
11 you have to make a security decision based on that.

12 Q Okay. Let's go there. You heard Mr. Cottrell
13 testify this morning that they have state-of-the-art
14 security practices and you just said that you disagree
15 with that approach. So what is your opinion as to
16 Authenticom's approach to security?

17 A Well, there are some things that on their face they
18 seem to be very solid. Having your stuff in the
19 Microsoft cloud, that's a solid thing. There's no
20 debating that. But the things that concern me are things
21 that are very simple. They're very basic cybersecurity
22 things, but that are not buttoned down. And I don't want
23 to sound mean, but they're sloppy.

24 The best example is literally in the way that
25 Authenticom solicits username and password information.

1 So as you saw in my declaration, we took a little screen
2 shot because I just wanted people to understand this,
3 where literally it will say please give us our username
4 and login information. I promise you I, in everything I
5 have seen, have seen very few cases where a professional
6 firm will solicit user credentials like that. And the
7 thing that really made me nervous is that they said you
8 can even do it over email if you want. There's no one
9 who's serious about cybersecurity who says pass me your
10 user credentials in clear text over email.

11 Now, again, I don't want to pick on Mr. Cottrell.
12 He seems like a really nice guy and it's a good firm.
13 But in his response to that point, he said something that
14 made me even more nervous which is that it's okay because
15 they do it in two separate emails. It will be the
16 username and then it'll be the password. But I hate to
17 tell you this. That doesn't make any difference. It
18 still make them severely vulnerable. And here is why:
19 Any hacker who is after this stuff, all they do is they
20 put a sniffer on the line. If you send two emails, it
21 doesn't make any difference because they still sniff both
22 of them and they still have the username and password.

23 So the part, to be clear, that makes me nervous
24 about this relates back to the culture of cybersecurity
25 that I was talking about. And if there are people -- and

1 again, I don't want to pick on Mr. Cottrell, but it
2 usually starts with the leader of the organization who
3 think that that actually is an acceptable cybersecurity
4 practice. Then it doesn't -- it doesn't bode well for
5 the rest of the firm.

6 So I think that's a very basic thing. And remember
7 what I said is that username password, these are the
8 credentials where people could get into the fortress,
9 they're the most important thing to protect. They're the
10 most important thing.

11 Another thing that really from a cybersecurity
12 perspective I thought was problematic that I read in the
13 most recent responses is there was a dealer who works
14 with Authenticom who said that they were using Telnet to
15 craft a workaround to the very legitimate, and I think
16 good cybersecurity practices for both CDK and Reynolds.
17 Telnet is a protocol that's been known to be insecure and
18 vulnerable for at least 15 years, and no one who is any
19 way serious about cybersecurity would ever use Telnet to
20 pass passwords and definitely not to do a workaround so
21 that the people could reactivate username and passwords.
22 So pretty basic things just on the authentication.

23 THE COURT: What is the device that's being
24 worked around by the use of Telnet?

25 THE WITNESS: The thing that's being worked

1 around with Telnet is, from what I understand, they were
2 using Telnet to log back in to the Reynolds'
3 infrastructure, reset the username and password on a
4 five-minute basis. So when Reynolds tried to defend
5 itself from what they think and identify as an intruder,
6 and that's what you do in cybersecurity, they disabled
7 that login and password, which is what you do any time.
8 If you see spurious behavior and you do it by a lot of
9 different means, you disable it. These people are
10 re-enabling it by logging in over an insecure mechanism.

11 The reason this matters is you're opening up another
12 hole in the castle wall with an insecure mechanism not
13 encrypted over Telnet. Telnet should not even be used.
14 And so I know that we're doing away with that too.

15 Q And how do -- what is your understanding of how CDK
16 and Reynolds issue or handle passwords and usernames?

17 A Well, the contractual arrangements are exactly what
18 you would expect is that you want a username and password
19 to be identified for a specific individual. It's called
20 role-based access. You do role-based access because you
21 want those individuals to be responsible for what they're
22 doing. You want to be able to track them. You want to
23 be able to talk to them and see that's who it is.

24 Again, another thing I'd like to emphasize about the
25 use of credentials is they should be by a human. Giving

1 a credential to a machine that runs a script that then
2 pulls back data is something that in cybersecurity
3 practice is very, very poorly looked upon because it's
4 not a human. Cybersecurity mechanisms, even in the
5 technology, intrusion detection, when you're doing kind
6 of like the holistic assessment of how a human would
7 behave, they're designed to look at humans. When
8 machines suddenly start doing something, you set off
9 those alarms, an intrusion detection system, and they
10 shut it down. So that means when you shut it down, the
11 people who shut it down incur a cost to their systems too
12 because they have to figure out what wrong. They have to
13 do a lot of forensics on that. It's another layered-on
14 cost.

15 Q You've heard earlier today one of the claims made by
16 Authenticom is that they only pull the data that dealers
17 specify. Based on the research you've done, is that
18 accurate in your opinion?

19 A So it was very interesting when Mr. Swire,
20 Dr. Swire, Professor Swire was up here, the exchange you
21 had talking about the information that they pull and what
22 you know they pull and what they don't. And here's what
23 I'd like to try to explain. I don't know this for
24 certain, but normally when you use scraping software and
25 you go in and you use credentials, scraping software gets

1 everything on that page. The way I understand the
2 scripts, which is the small software program that
3 Authenticom is using, and actually Mr. Cottrell even
4 mentioned this, he said they're English script. That
5 means it scrapes the page. It pulls all that back. It
6 doesn't read it. It's not AI. It doesn't read it and
7 only pick what's there. It scrapes it. It pulls
8 everything back.

9 It puts in a request to go to the next page. It
10 scrapes it. It pulls all that data back. It puts in a
11 request to go to the next page. It scrapes it. By the
12 time, using the airline analogy, you get to your ticket,
13 it's already scraped five pages worth of data that may
14 not have anything to do with what the actual query was.

15 Now, I know that they do try to limit, but my
16 impression, in particular when it's not run through the
17 Reynolds reporting software, Dynamic Reporting, is that
18 there's a very high likelihood, I don't know this for
19 certain, there's a very high likelihood that in this
20 phase between when they're pulling back the data and it
21 gets to DealerVault, they're pulling back a lot of stuff
22 that is not just exactly what is in there.

23 Now, when we talk about transparency, DealerVault
24 itself, I think, is good. That's an impressive piece of
25 technology. It does give the dealer transparency on data

1 that's there and where it's going. The point that I'm
2 most concerned about from a transparency perspective is
3 what happens from the time they scrape, they pull all of
4 that back, and it goes into DealerVault because no one
5 has any visibility on that except for the people within
6 Authenticom. The DMS providers don't. The dealers
7 don't. It's in that pullback and you don't know what's
8 there.

9 Q And why is this a problem from a cybersecurity
10 perspective?

11 A Well, in the earlier conversation about data
12 minimization, that was the principle that I was talking
13 about. So you want to try to take only the specific
14 things that you need. When you do, this is what I call
15 brute force, it's a term of art. It's not trying to be
16 derogatory. A brute force-type approach like that, it
17 means you're taking a lot of stuff and it takes a lot of
18 confrontational power to do that. That's a brute force
19 pull. You get a lot of stuff that you don't need and you
20 don't want, which is why in other sectors where there are
21 data-like integrators, you don't use screen scraping;
22 right? Because it's too inexact. You use a push-type
23 mechanism because then you're sure the data that is going
24 to the recipient, the third-party vendor, is the data
25 that it should be.

1 Additionally, people don't have to break into your
2 system or have access to your system to do that. You
3 push it out. They get it. That can be done in a very
4 dynamic or realtime-like way.

5 THE COURT: On the kind of overscraping I'll
6 call it --

7 THE WITNESS: Yes, sir.

8 THE COURT: -- I get the concept. But do you
9 know specifically whether there's any meaningful or
10 particularly high value information that's in that extra
11 scrapings that -- not just the stuff that shows up in
12 DealerVault, but it's the extra stuff -- I mean like in
13 my vision using the airline analogy, now we've got a lot
14 of little menu tabs, the Delta logo, and a bunch of other
15 junk that is really not high-value stuff. It's extra,
16 but it's not very value.

17 THE WITNESS: Right. Again, I don't know for
18 certain, but, you know, depending on how they pull up the
19 report, there could be stuff that's in there that
20 shouldn't be. Whether it's a social security number, I
21 don't know. I doubt that they want that. I don't think
22 they do. But remember when you talk about social
23 security numbers being encrypted, from what I understand
24 from the Reynolds and CDK systems, they are encrypted,
25 but you bring it up on a screen. If it's brought up on a

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1 screen, that means someone can scrape it. And it doesn't
2 matter whether it's encrypted at rest, if you bring it up
3 on a screen it could be scraped. Trust me, I've seen
4 this done.

5 THE COURT: So the potential is there, but you
6 don't really know whether there is actually anything like
7 that.

8 THE WITNESS: No, sir. Based on professional
9 experience with screen scraping, I would say there's a
10 pretty high probability that when you scrape, you get a
11 lot of extra stuff that you didn't intend on.

12 THE COURT: Okay.

13 THE WITNESS: If I could make one other point
14 about the login credentials. I don't think in any way
15 that Authenticom has any intent on, like, pulling social
16 security numbers or stealing financial data. What I
17 really do worry about is the way they handle those
18 credentials is sloppy. And that the bad guys who are
19 looking for seams like that will take those and they'll
20 use that seam that maybe even inadvertently is created by
21 Authenticom and they go in the system. And remember,
22 when they're in the system, these guys are very smart.
23 They do things called privilege access. They would get
24 in the local area network of the dealer, and all they
25 need is one way in, and you get in a system and you can

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1 move laterally through things the whole way through the
2 network. And they could steal financial information.
3 They could steal credit card information. It's by
4 getting that one seam in you're opening up a lot of risk
5 to the dealer.

6 Second of all, you're opening up risk for the DMS
7 providers because they have it structured so that it is
8 locked down. Their are credentials there. If you give
9 an opening to some of the bad hackers, then they're going
10 to take it and they'll use that vulnerability for
11 something different.

12 Q You've used the term seam several times and you use
13 it in your report. Can you explain what the concept is
14 from a cybersecurity perspective?

15 A Sure. From a cybersecurity perspective, you look at
16 anyplace where there's a connection between one thing,
17 and in particular, where there would be a human
18 connection or a human interface. It's because humans are
19 very fallible, and as I said, one of the biggest problems
20 with cybersecurity. So here's an example of a seam. A
21 seam would be, for example, when Authenticom is trying to
22 connect into the DMS. They're connecting in. It has to
23 go into a port hole. Just like you would know a seam in
24 plumbing or electricity, there's an area right there that
25 is now exposed. I remember and, you know, have spent a

1 lot of time around NSA and Cybercom the last several
2 years, that's exactly what you look for. You look for a
3 seam anywhere in the network.

4 The more hops there are when you transfer data, the
5 more seams there are. Just imagine plumbing. The
6 plumbing in your house, the longer you go, the more
7 likely there's a joint, the more likely it is to break or
8 for someone to try to get in.

9 Now, the seams that are the most helpful are the
10 ones that are based on credentials, because you get in
11 and it means you're a trusted person. Once that user is
12 inside that network, you assume that they're safe. That
13 means they can go and they can work around. That's the
14 seam that you worry the most about.

15 Q And is it your testimony that what Authenticom's
16 access, their automated access into the DMS creates that
17 kind of seam?

18 A Yeah. It's -- this is -- my professional
19 perspective is it's a seam that does not need to exist.
20 Again, look at what analogous-type firms are doing in the
21 financial sector. So Professor Swire talked about
22 Yodlee. If you look at Yodlee right now, they do not do
23 screen scraping and they do not take user credentials.
24 They set up an API. There's a software-to-software
25 interface. They make an arrangement with the bank, it's

1 a consensual agreement, and the data most often is pushed
2 and it's pushed in a way that's secure. There's not a
3 seam.

4 Mint. There's a lot of talk about Mint and how Mint
5 goes and they pull and they scrape. That's what they
6 used to do. Their business model, if you look at it now,
7 is changing very quickly because they've sensed that the
8 big banks, consumers, the law, the Europeans are always,
9 you know, a little stricter about this than we are.
10 They're not looking at that as an accepted business
11 practice.

12 Even in Mint now a lot of y'all use Mint. They have
13 two-factor authentication. The idea that Mint would ever
14 send you an email that says hey, send your username and
15 password in clear a text email would be kind of crazy.
16 So it's a different thing. There's an analogous idea of
17 an integrator. The way it's implemented is something
18 that is very different.

19 Q So it doesn't matter -- if I understood you
20 correctly, it doesn't matter what the data is that is
21 being removed from the system. So even if Mr. Cottrell
22 is correct that he's only removing seven categories of
23 data, the seam is nonetheless created.

24 A The seam is nonetheless created. Right, yes. Of
25 course.

1 Q And do CDK and Reynolds do anything to reduce or
2 mitigate seams?

3 A They do a lot to mitigate seams. I mean --

4 THE COURT: Just to be clear, seam just means a
5 point of vulnerability. We got like a physical metaphor
6 here. It's a point of vulnerability.

7 THE WITNESS: It's a point of vulnerability
8 whereas -- I mean here's the best example. A firewall is
9 not a point of vulnerability. There's no hacker that
10 tries to go through the firewall anymore because it's
11 mostly impossible. Why would you do that you can
12 spearfish someone, which is you send them an email that
13 -- another thing that I would be nervous about --

14 THE COURT: I think I get it. We'll let your
15 counsel kind of guide you a little bit more.

16 BY MS. MILLER:

17 Q You said a moment ago, and I just want to make sure
18 I understand some terminology here. You made a reference
19 to the concept of a dealer network. You're not making
20 that synonomous with the DMS. That's the dealer's
21 network; the land.

22 A Yes. Right. Exactly.

23 Q I just want to make sure I understood the
24 terminology.

25 A And remember, on the dealer's network there are a

1 lot of things that are not the DMS. That's all their
2 personal commuters, some financial stuff, I'm sure credit
3 card information. But it's connected to the DMS and it's
4 connected to the other networks that are connected to it.
5 And again, I'm telling you I see this all the time, bad
6 guys go in through the weakest door and they go in,
7 they'll go on that network, and it's called swimming
8 upstream. And you go anyplace else that's connected,
9 because once you're in those pipes, you can do a lot of
10 bad things.

11 Q You testified earlier about transparency and that
12 you said, I believe, please correct me in I got this
13 wrong, that Authenticom does provide some transparency to
14 the data that sits in the DealerVault interface.

15 A Yes.

16 Q To what extent is there transparency either on the
17 front end through the DMS provider or once the data
18 leaves DealerVault?

19 A So I talked a little bit about the concern I have
20 with the transparency from the point they pull the data
21 to the point that it gets in DealerVault or where they're
22 holding it. I think that seems apparently to be a black
23 hole, and I offered my hypothesis about some things that
24 could be there. But again, I don't know that. From the
25 point the data goes to DealerVault then to other vendors,

1 it seems that there is transparency on that and that's a
2 good thing from that perspective.

3 Q Okay. So once the data is actually in DealerVault,
4 and then I believe the testimony was then they send that
5 data out, is there any transparency once it leaves the
6 dealer interface other than they know it was sent?

7 A I don't think that the dealer has any visibility of
8 the data once it's with a third-party vendor. So this is
9 an application provider that does something else. From
10 everything I know and have seen and heard today, there's
11 no visibility on that data.

12 So here's one point of concern. It sounds like, I
13 did hear it today, Authenticom in their contract
14 stipulates that you have to destroy the data when you're
15 done with it. But I'm not sure what visibility is in
16 place for doing that or what they do with it. It's kind
17 of out there.

18 Q You talked a moment ago about brute force methods.
19 Do those methods cause any kind of impact on CDK's and
20 Reynolds' systems?

21 A Yeah. When you use screen scraping or you're doing
22 multiple queries on a system, the thing you're most
23 concerned about is not actually the size of the file. So
24 I wanted to highlight that as something that I think is a
25 little bit spurious. But the tax that it puts on the

1 computational power of the systems that are there. So
2 here's why: The 5-meg file that the team here was
3 talking about could be a compressed data file that
4 resulted from 10,000 queries; right? You do all these
5 pulls, package it up, and then you send it out. So in
6 terms of the tax on the bandwidth pipe, it's almost
7 nothing.

8 But in terms of computational power put on all of
9 the network, that's something that is completely
10 different and the more you send the little pings in the
11 queries, the more it will raise the computational power
12 right there that needs to be used.

13 Q Are you aware of there being instances where these
14 kind of brute force methods have, in fact, taxed CDK's
15 and Reynolds' systems?

16 A There are two specific cases. The one Mr. Cottrell
17 mentions in his statement, which is evidence in and of
18 itself that it definitely can happen. It's not just a
19 theoretical thing. And then there is another instance in
20 which another third-party, the name I can't remember
21 exactly but I think it was like XFactor or XData, also
22 had a misconfiguration of their software which resulted
23 in something like 900,000 files being corrupted and also
24 taxing the system to the point that it had to be taken
25 down for a little while.

1 Another thing -- another thing I asked in doing my
2 diligence for the case is if the Reynolds or CDK team had
3 evidence in their logs of this happening. Because the
4 great thing about cyber on the one hand is there's a lot
5 of data to see from a cybersecurity perspective. You can
6 go into logs and see how many times did people actually
7 log in. Because I wanted to test the hypothesis of how
8 often Authenticom actually was doing these queries. So
9 based on that, I saw log data that showed during a
10 specific month, and this report came out on the 6th of
11 June, that in one day there were 18,000 queries of the
12 CDK DMS system. So --

13 Q Let's actually put that exhibit in front of you so
14 you can look at it specifically. This is defendants'
15 Exhibit 186.

16 THE COURT: Is there any objection to
17 defendants' 186?

18 MR. SCHWARZ: Yeah. I mean the document is
19 extremely misleading, but we'll go into that on cross.

20 THE COURT: Okay. All right. I'll admit it and
21 then we can find out why it's misleading.

22 MR. SCHWARZ: Actually is that 186 or 187?

23 MS. MILLER: 186.

24
25 BY MS. MILLER:

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1 Q So, Mr. Rosenbach, have you seen this document
2 before?

3 A I have, yes.

4 Q And what is your understanding what this document
5 is?

6 A My understanding is that this is data pulled from
7 CDK systems that shows the number of queries to the DMS
8 system for CDK. So you can see, for example, the number
9 of DMS servers that they surveyed to pull the data out.

10 Q And is this -- if I understand correctly, this is
11 the number of servers on which they saw Authenticom
12 activity; is that correct?

13 A That's correct, yes. So you can see in pages
14 further down in the document that they did analysis to
15 determine who it was, and a lot of the Authenticom user
16 IDs are kind of self-evident. Mr. Cottrell, you'd be
17 happy to know you're prominently featured as a login name
18 for a lot of these. And so the team was able to pretty
19 easily identify who it was that was doing the pull in a
20 lot of cases, the query I think I want to say to make it
21 more accurate.

22 Q So if you look at this summary page -- so it is --
23 this report data I think you said was 6-6-2017. I'm
24 sorry, did you discuss and go through this report with
25 anyone at CDK?

1 A I did, yeah.

2 Q And who was that person?

3 A I spoke to the vice president of business
4 operations.

5 Q And that gentleman's name is -- I'm sorry, is that
6 Howard Gardner?

7 A That's Howard Gardner, yes.

8 Q And so the report is the activity they saw of
9 Authenticom, so for -- and how long a period is this?

10 A This was for 30-day period.

11 Q Okay. And so they saw Authenticom activity on the
12 CDK servers on 542 DMS servers.

13 A Correct, yes.

14 THE COURT: And what is a DMS server?

15 THE WITNESS: So the way that these firms have
16 their architecture built is that in most cases each
17 individual dealer will be hosted on a server. The server
18 is the computer that dishes up information back and
19 forth. They do that primarily for security reasons and
20 for performance reasons because if you have the server
21 segregated, it means someone who hacks into one server
22 can't get into all the data of all the dealers. It's
23 segregated on purpose, but it also is built that way so
24 you can optimize operational performance.

25 BY MS. MILLER:

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1 Q What is your understanding of what a query is for
2 these purposes?

3 A My understanding is a query is when there's a
4 specific request and command put in by, in this case
5 Authenticom, to do a pull of data back. It's a query.
6 So they're talking to the computer. It's the little
7 script that they run that says hey computer, I would like
8 this data. Please send this data back.

9 Q Is it possible for a query or for a single command
10 line of English to contain multiple queries that will
11 seek thousands of pieces of data at a single time?

12 A Yeah. As I understand it, it's a single query
13 written as a script that could be for that, and then, you
14 know, we'd pull that back. Now, depends on how they have
15 it configured, there could be a query, packages the data,
16 and then they compress it and they pull back one five-meg
17 file. But for the purposes of computational power, it
18 makes a big difference because it's a query. It tasks
19 it. As soon as it tasks, the computer has to respond.
20 It spikes in computational power.

21 Another thing to point out here is that, you know,
22 as you've heard, this didn't crash the system. But
23 they -- both firms, CDK and Reynolds, that means that
24 they have to plan in from a capital investment
25 perspective to architecture for additional computational

1 power for all this to be in there. So they don't want to
2 take the risk that they're going to underinvest in
3 computational power and servers and bandwidth when they
4 now know that there is this type of burden put on their
5 systems and their network by Authenticom.

6 Q Okay. Just to -- we'll talk to Mr. Gardner about
7 this more tomorrow. But just to get some clarity, what
8 is your understanding of the information in terms of how
9 CDK is able to determine that these hits are all caused
10 by Authenticom?

11 A Yeah. The hits come in because using the method
12 that Authenticom uses with the username and password, you
13 can identify what the username is. It's pretty apparent.
14 And in other data that I saw that backed this up, I think
15 in one of the other exhibits, actually list the username
16 and that's the way -- one of two ways you can identify
17 who it is that's doing the query.

18 The second, by the way, is that I know Authenticom
19 for obvious reasons tries to disguise the username so
20 that they don't get blocked, but the fingerprint of the
21 script that they use is consistent throughout, and just
22 the same way you do computer forensics when someone hacks
23 you, the fingerprint of that script is readily
24 identifiable.

25 Q And if you --

1 THE COURT: Just so I -- is the contention here
2 that lines 10 through 15 are Authenticom queries?

3 THE WITNESS: Yes, sir. That's my
4 understanding. And the reason I think it's important is
5 in --

6 THE COURT: And it's an Authenticom query by
7 virtue of a username that's not shown in these reports
8 here; right?

9 MS. MILLER: They are shown. I'll take you
10 there next, Your Honor.

11 THE COURT: All right.

12 BY MS. MILLER:

13 Q If you go to page 17 of the exhibit. At the top of
14 the Descriptions, across the top, I think column A is --
15 line is cut off by a hole punch, but I think it says
16 username -- *Vendor Name*. Column B is *Username*. Column C
17 is *User Description*. And then it goes on from there.
18 Account file. Count of accesses. File accessed.
19 Account accessed. Acknowledged. Last seen and comments.
20 And you see in the column A it's identified as
21 Authenticom. This goes on for 400 some-odd pages. The
22 actual user description and usernames are given in
23 columns B and C. We can scroll through, but they come in
24 -- if you want to take me through.

25 A So there are a couple things I think are important

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1 to understand from this. The first is that this is a tax
2 on any IT system when you do something like this, as
3 opposed to if you set either in API or you actually did a
4 once daily report that was pulled by the dealer and sent
5 it to Authenticom, the two DMS providers would not have
6 to account for this type of tax on their system.

7 The second thing is that I also looked at the time
8 of day, because my understanding was that Authenticom
9 said that this only happens at night. You can see it
10 happens very often during the day. And the ones, in some
11 ways it looked the most concerning, is there was one big
12 batch of stuff that was on Friday at about six o'clock in
13 the evening, which from what I understand and even when
14 I've bought cars is probably one of the busiest times for
15 a dealer. So I'm not sure that the data that I saw is
16 consistent with some of the things that have been
17 presented by Authenticom, either in the scope of how they
18 do this, nor in the timing nor the potential effect.

19 Q And then if we could turn to defendants' Exhibit
20 187. And have you seen this document before?

21 A I have, yes.

22 Q What is your understanding of what this document is?

23 A So this is a summarized version of the same, which
24 is showing some that are authorized and then some
25 unauthorized. But you can see here that most of these

1 are going to DealerVault.

2 Q So this is nonauthorized access. Is this a CDK --
3 is this a screen shot?

4 A Yeah. This is a CDK screen shot of data analysis
5 they do on queries and things going on. So as I
6 mentioned before, if you look at the last scene, you can
7 basically take a lot of data from the queries in the last
8 30 days for this specific dealer. And then also you can
9 see the time at which it was done; specific times which
10 may be busier or not.

11 Q You were here for Mr. Swire's testimony earlier?

12 A Yes.

13 Q And I think you've already touched on the Mint and
14 Yodlee points. Was there anything else -- I want to
15 touch on the FTC guidance and the third-party distinction
16 that Mr. Swire discussed. In his reply, he discusses the
17 FTC guidance that distinguished between first parties and
18 second and third parties. Are you familiar with the FTC
19 guidance?

20 A I am, yes.

21 Q And what is your understanding of the purpose of the
22 FTC's approach?

23 A Well, I think, like Professor Swire explained, they
24 want to make sure that someone is taking care of
25 consumers' data and that there's someone who's

1 responsible for it.

2 Q Do you agree with the FTC's approach to data
3 protection?

4 A I agree with the framework and the approach. I
5 think the interpretation in this case of who is actually
6 responsible for protecting the data is something where I
7 think my analysis is different than where Professor
8 Swire's is.

9 Q So it is not -- would it be fair to say it's not
10 your interpretation that the FTC guidance mandates
11 intermediate access to the data so long as the dealer
12 approves it?

13 A No, I don't believe that at all. Also I think the
14 contractual issue is one thing, but just the business
15 decision of who has to protect the data is of preeminent
16 importance. So you talked a little bit about, and
17 Professor Swire, you know, mentioned this as well, is if
18 there's a hack of one of these DMSs and all the data goes
19 out, maybe the dealers, like, share some blame. But my
20 professional opinion is it's the DMS providers who are
21 going to really, really suffer the reputational risk,
22 probably the litigation risk, probably the business risk
23 as well. And so, you know, an FTC framework is one thing
24 and it always seems neat when you read it, neat and tidy,
25 not neat like it's cool. But then you have a complicated

1 case like this and you just have to decide okay, well,
2 that's all fine. But who has to take care of the data so
3 that their business risk is minimized. And in this case,
4 I think that is the DMS provider. The dealers, of
5 course, share that, but remember the dealers are
6 essentially contracting the security of the data out to
7 the DMS. So I think there's some even importation of
8 responsibility there.

9 Q Having heard Mr. Swire and having read both of his
10 declarations, was there anything -- and I may have asked
11 this, and if I did I apologize. Was there anything in
12 his testimony that changed your opinions as you sit here
13 today?

14 A No.

15 Q Was there anything else in his testimony that I
16 haven't already covered that you disagree with that we
17 need to cover here today?

18 A No.

19 MS. MILLER: Your Honor, we tender the witness.

20 THE COURT: All right. Cross-examination.

21 (5:12 p.m.)

22 CROSS-EXAMINATION

23 BY MR. SCHWARZ:

24 Q Good afternoon, Mr. Rosenbach.

25 A Hi. How you doing?

1 Q I'd like to -- you testified about Yodlee and -- I
2 believe just about the Yodlee. You've never engaged in
3 the screen scraping; correct?

4 A I said Yodlee, for the predominant stuff they do
5 right now, they work through vendor services, through
6 APIs.

7 Q We just pulled up Yodlee's website. And take a look
8 what it says on screen scraping.

9 A So remember what I said is they do it through an
10 API.

11 Q But it says one of the most common ways -- your
12 testimony was that Yodlee would never, doesn't generally
13 do screen scraping.

14 A I said they're moving away from screen scraping and
15 Yodlee does not use user login credentials, they use
16 APIs.

17 Q Okay. Why don't you read what the first paragraph
18 here says. "One of the most common ways Yodlee
19 aggregates data is through screen scraping, a script or
20 agent is coded by Yodlee to log into a site." So
21 according to Yodlee's website at least, that's one of the
22 most common ways they obtain data; right?

23 A Right. Through an API and an agreement with the
24 financial institutions that they're working through. So
25 they're a data aggregator. Right now Yodlee has become

1 kind of the center for a lot of the fintech firms. I was
2 just at a fintech conference a couple weeks ago talking
3 on cybersecurity. They take the data, do some of the
4 things that Authenticom does, and then allow this very
5 interesting ecosystem of fintech firms to have access to
6 it.

7 THE COURT: Just clarify this for me. Because
8 during your testimony I really thought that you were
9 drawing a distinction between screen scraping and the
10 APIs. Now you're telling me that based on what you're
11 seeing in the Yodlee website, they do screen scraping
12 through an API. Am I misunderstanding something? Or are
13 you just saying this is old news here on their website.
14 Their new way of doing it, which you have firsthand, is
15 that they do it through an API.

16 THE WITNESS: Not only firsthand, I think if you
17 look at other parts of the Yodlee website, you'll see, in
18 fact, they say that they're moving almost completely to
19 APIs.

20 THE COURT: I just want to make sure I
21 understand this. Screen scraping is not the API way.
22 That's a different way. Two different things.

23 THE WITNESS: Well, I mean it gets a little
24 complicated. You could do screen scraping through that,
25 but I think the major distinguishing factor is whether or

1 not you do it with login credentials or with an API that
2 would allow the software to create this connection where
3 the screen scraper would go through there, still a more
4 security connection.

5 THE COURT: Okay. So then I totally polar
6 different types.

7 THE WITNESS: There are two difference things.
8 The API itself is -- it's the connective tissue between
9 these two things. The reason that you do that is so that
10 you try to limit the seam itself. That creates a
11 connection through which different types of software can
12 work. One might be screen scraping, but remember in this
13 case it's not -- it's not hostile to use the word I know
14 they don't like. They're doing it in an agreement
15 with -- in an agreement with the different banks. At
16 least that's the -- not in every case. That's the strong
17 direction that these financial firms are going as well.

18 BY MR. SCHWARZ:

19 Q I mean look at the next bullet. Take several
20 seconds, sometimes up to 30 seconds or more to retrieve
21 data, especially the first time an account is added.
22 This makes sense because some data will be available at
23 the login screen and some data will be available two or
24 three pages deeper in the navigation.

25 Isn't it a fact that Yodlee has developed APIs with

1 large financial institutions and it uses screen scraping
2 and logins with the thousands of other small banks where
3 individual consumers have accounts?

4 A I think some of the things you said are fact and
5 some of those things I don't know. You just mentioned
6 four or five different things. It's a fact that they are
7 developing APIs. I don't debate that they do screen
8 scraping. That's also what I said. Remember what I
9 said. I'll clarify -- sorry, Your Honor also if this was
10 confusing.

11 Screen scraping, and in particular the use of login
12 credentials, login credentials in particular is very
13 quickly going down.

14 Q But for small banks.

15 A For smaller banks it's --

16 Q Yodlee does not -- has yet to develop APIs; correct?

17 A I don't know that for sure.

18 Q Okay.

19 A I mean that would make sense. Smaller banks have --
20 they have less resources to invest in IT-type stuff.

21 Q And therefore -- and there are thousands of smaller
22 banks; correct?

23 A I assume that's correct, yes.

24 Q And many more than there are JPMorgan Chases of the
25 world.

1 A Yeah, there's no doubt about that.

2 Q Let's go back to 186, in defendants' Exhibit 186.

3 So you were describing screen scraping in a way I thought
4 was interesting.

5 A Okay.

6 Q You described it as show a page, grab the data on
7 the page, and then there's a request show me the next
8 page. Grab the data on that page. Show me the next
9 page. Grab the data on that page.

10 A Yes.

11 Q And with screen scraping, that's all automated;
12 correct?

13 A Depends, yeah.

14 Q And you can actually, because the computers type
15 faster than human beings, it can quickly flip through
16 pages; correct?

17 A That's the idea behind screen scraping, because you
18 don't want to have a human doing it, yes.

19 Q And each of the requests to show me the next page,
20 that's another query; correct?

21 A It's hard to tell.

22 Q But if --

23 A It's not necessary -- here's why that's not
24 necessarily the case is that the query, depending on the
25 way the script is written, could be one query that says

1 do this, this, this, this. Flip the page. This, this,
2 this. You're not able to know.

3 Q Okay. What if the query says, which is from my
4 understanding of how it works, show me columns A through
5 H and then I scrape that data. And then another query
6 that says show me columns I through Z and that data is
7 scraped. Show me columns AA through HH. Scraped. Each
8 of those would be a separate query; correct?

9 A I'm not familiar with what you're talking about; so
10 I wouldn't --

11 Q There's no reason that that wouldn't be --

12 A There could be because of what I just said.

13 THE COURT: Hold on. There's an objection.
14 You've got to let me rule on it.

15 THE WITNESS: Yes, sir. Sorry.

16 THE COURT: I'm going to overrule. Now you can
17 go. Seems formalistic, but sometimes it matters a lot.

18 THE WITNESS: No, sir. I understand. It's
19 interesting for me because I want to law school but never
20 got to do real law. So I get to watch y'all and face the
21 wrath of opposing counsel here. Here's why: The script
22 you write could do multiple things or you could have a
23 specific script there. But in the end, the numbers that
24 are here are either what they are, one-for-one like you
25 were just saying, or they're even worse in that each one

1 of those actually represents multiple commands and taxes
2 on the system. We don't know. I don't claim to know
3 that. But I am able to say it's almost impossible that
4 something lower than that number in terms of pure number
5 of queries.

6 BY MR. SCHWARZ:

7 Q But let's look at Bob Rohrman. Bob Rohrman, as I
8 understand it, is a large dealership with multiple
9 particular car dealers in the midwest. Let's assume Bob
10 Rohrman has 50 dealers and there's reference here to --

11 A I have no idea how many dealers Bob Rohrman has.

12 Q It could be 30. It could be 50. I'm just -- we're
13 doing the math here.

14 A It makes a big difference though.

15 Q Yeah, clearly. And that's why it's important we not
16 use spreadsheets that could potentially be misleading.

17 So let's assume that Bob Rohrman has 50 dealers.

18 A Actually that's probably a factual question. Sorry.
19 I don't want to get out of line.

20 THE COURT: Let's wait for the question that can
21 be answered here. Go ahead.

22 Q So when it refers to queries per in the last 30
23 days, you've got a number here of 718,000. So if there's
24 50 dealers, you divide that number by 50 to come up with
25 the number of queries per dealer; correct?

1 A My -- my understanding, which you will be able to
2 ask the experts tomorrow, is that each dealer has a
3 server.

4 Q But it's the top six servers by query count and
5 there's one server here for Bob Rohrman.

6 A I don't know which dealer that is though.

7 Q Okay. Well, assume the accuracy of my comment --

8 THE COURT: So I guess you don't know whether
9 the server is dedicated to the automotive group that
10 might have 50 or 60 dealerships.

11 THE WITNESS: Right. It could be a group. It
12 could be the dealer. I think the point is --

13 THE COURT: No, no. The point is what do you
14 know. You don't know whether it's 50 dealers or one
15 dealer. It's one server, that's all you know.

16 THE WITNESS: Yes, sir. That's the only thing I
17 can say with complete --

18 THE COURT: Okay. Good.

19 BY MR. SCHWARZ:

20 Q And so you don't know whether it's 50 dealers. You
21 also don't know whether the query structure works the way
22 we were just discussing, whether if it's 70 columns, A
23 through H, that's one query. And 70 columns, I through
24 Z, that's a second query.

25 A That's correct.

1 Q You don't know that either; correct?

2 A That's correct.

3 Q And so if that's the structure in the sales query to
4 get a sales report takes 50 different asks because that's
5 how many columns there are across the board.

6 A Um-hmm.

7 Q And there could be 50 isolated queries just for one
8 report; correct?

9 A There could. I believe --

10 Q You just don't know.

11 A The thing that I do know and the point that I
12 believe remains is that this is a number that is there
13 that is factually accurate and represents at a very
14 minimum one specific request of a script run by
15 Authenticom at a very minimum. That's the reason I think
16 it's instructive. Because it could be something much
17 worse. It could be that there are scripts built within
18 it and it could be something else.

19 Q Okay. But you don't know one way or the other
20 whether the query structure is the way that I posited.

21 A I don't, no. I have not seen your query structure.

22 Q And if -- this is all querying text in a database;
23 correct?

24 A I don't know that. Could be, yeah. Most likely. I
25 hope you wouldn't tell us that you're querying outside of

1 that.

2 Q Do you think the numbers are stored in text or
3 stored as pictures?

4 A I don't understand what you mean, I'm sorry.

5 Q So if one -- if it's pulling VIN numbers, those are
6 alphanumeric numbers; correct?

7 A Yeah.

8 Q That's going to be text.

9 A Okay.

10 Q Did you watch the video on DealerVault?

11 A I did, yeah. Maybe you could restate your question,
12 then I'll be able to help you. I didn't understand what
13 you said.

14 Q My apologies. What I'm trying to show is that or
15 what I'm trying to ask is assuming the query structure is
16 -- vision it this way: You've got the equivalent of a
17 spreadsheet that you're pulling something off of and you
18 want to pull this many columns and that far down.

19 A No, I know how you find out how they work.

20 Q And you say show me this amount of text. Does that
21 tax the computational power of the server?

22 A Of course it does.

23 Q To pull 12 columns across and --

24 A Of course it does.

25 Q -- 8 columns down.

1 A Of course it does.

2 Q Significant impairment in text files on the server.

3 A The fact that it's a text file doesn't matter that
4 much. It's the pull on the system. So here's something
5 that can help you understand this, maybe for you, sir, is
6 that a denial of service is not a big amount of data.
7 But, for example, we saw the Iranians do a distributed
8 denial of service against all the financial web pages by
9 sending very, very, very small bits of data but at an
10 extremely high frequency. Why? Because it taxes the
11 system. It makes it spin. And it increases the data,
12 the computational utilization. So it sends the text
13 file. It's scraping -- actually it doesn't have --

14 THE COURT: I think we get the idea. You're
15 getting beyond the point of diminishing returns here. I
16 just want to make sure I understand the spreadsheet here.
17 So lines 10 through 15 on the summary report, these are
18 what you've identified as the Authenticom queries?

19 THE WITNESS: 10 through 15, just to make sure
20 I'm looking right. Yes, sir, all of the numbers you see
21 by the server number are Authenticom queries. So on this
22 page and then all of the pages on down there.

23 THE COURT: Okay. And so, like, all these 493
24 pages, these are all Authenticom queries?

25 THE WITNESS: Yes, sir. As best everyone can

1 tell from doing the data analysis on both the username,
2 the login information, and the fingerprint of the
3 scripts.

4 THE COURT: Also and the summary page then just
5 gives me the top --

6 THE WITNESS: It's some examples of some so that
7 you can see --

8 THE COURT: Well, it's not just some examples,
9 it's --

10 THE WITNESS: Yes, sir.

11 THE COURT: -- as judged by the percent of the
12 total queries --

13 THE WITNESS: Yes, sir. You're right.

14 THE COURT: -- these are the top six.

15 THE WITNESS: Yes, sir. Sorry.

16 THE COURT: And so the point that the
17 spreadsheet is trying to make is that there's a certain
18 amount of effort that the DMS system is exerting in
19 response to the Authenticom queries.

20 THE WITNESS: Yes, sir. And the broader point
21 is that's the method by which they do those pulls is
22 something that does have an operational cost to the DMS
23 providers.

24 THE COURT: Sure. Everything, even like a tiny
25 request takes up, and if you have a lot of tiny little

1 requests, it adds up to a lot.

2 THE WITNESS: Yes, sir.

3 THE COURT: Okay. Here is -- like if these are
4 all Authenticom queries, why didn't you, like, total them
5 up and tell me what percentage was devoted to Authenticom
6 queries? Instead I got just some examples of what seem
7 like they must be big dealers that work with Authenticom.

8 THE WITNESS: Yes, sir. I think we could
9 probably do that for you, but that's not something that
10 we did.

11 THE COURT: Here's another question I have.
12 These queries are made by Authenticom. Presumably Bob
13 Rohrman, whatever he's got, 50 dealerships or 75 or one,
14 he's going to need that information somehow. So if
15 Authenticom wasn't doing it, somebody could be doing it
16 for Bob Rohrman. He'd be going through an API or he'd be
17 having his vendors or whatever. So yeah, there's 5
18 percent of it that's devoted to Rohrman, but somebody's
19 goin to -- the DMS server is going to have to do it for
20 him one way or another.

21 THE WITNESS: Um --

22 THE COURT: So what I'd like to know is how much
23 extra was added because it's done the Authenticom way
24 instead of some other way?

25 THE WITNESS: Right.

1 THE COURT: That doesn't tell me that.

2 THE WITNESS: No, it doesn't tell you that. But
3 if you think about the approach, either with an API where
4 people pushed it out, right? There's not the ping, the
5 response -- the response and the acknowledgement in the
6 computer --

7 THE COURT: I get it. This way is a bigger drag
8 than --

9 THE WITNESS: Yes, Your Honor. But it could be
10 push, it could be something that's less. I don't know
11 exactly how much. Or they could run the manual Dynamic
12 Reporting report once a day and that would be some tax on
13 the system; most certainly considerably less than this
14 and they could send it to him.

15 THE COURT: But we don't really know how much.
16 It doesn't give me a very good quantification of how much
17 extra the Authenticom system is taxing the system as
18 opposed to the other alternatives that are authorized by
19 CDK.

20 THE WITNESS: It's not -- it's not, you know,
21 perfect analysis for that, that's correct.

22 THE COURT: All right.

23 BY MR. SCHWARZ:

24 Q So you testified a bit about the concept of a seam
25 and I believe your testimony was that every time there's

1 an additional seam, there's an additional point of risk;
2 correct?

3 A That's correct, yeah.

4 Q And any new user login and password is a seam in
5 your opinion; correct?

6 A It's potentially vulnerability; right.

7 Q So every new employer that's assigned a username and
8 login in your opinion it's a new seam and a new point of
9 risk; correct?

10 A Absolutely. Yes.

11 Q So every time that someone gets hired in the service
12 department and gets a username and login, that's a new
13 threat; correct?

14 A I didn't say it's a threat. I said that it's
15 potentially a risk, which is why you want them to have
16 good IT training. You want to make sure you do a
17 criminal background check. But they have access to your
18 system. They're on your network. They're a risk, as
19 you've seen from all the insider attacks that the U.S.
20 government suffered recently.

21 Q And do you have any sense of how many employees
22 there are that work at car dealerships in the United
23 States?

24 A In total?

25 Q Yes.

1 A I don't, no.

2 Q Significantly greater number than just the one that
3 is Authenticom; correct?

4 A Than --

5 Q Authenticom is just one entity; correct?

6 A Yeah. Sure.

7 Q Okay. So in terms of seams at risk, there are
8 significantly more risks at dealerships just that hire
9 people?

10 A No, because they're qualitatively different things.
11 You're talking about pure numbers. What I'm talking
12 about is a user ID that's created for someone that's not
13 a person; that is used in a way that gives access to pull
14 data out. User ID for an employee on the network,
15 whether they have access to the DMS and updates, it's a
16 much more controllable thing. That's why you do that.
17 You give a user ID, a password to a person because you
18 can monitor the person.

19 On your network, you have intrusion detection and
20 you have heuristics that monitor whether that person is
21 doing something that is unusual for them or not. They're
22 printing out a lot of stuff late at night. So it's not a
23 pure number thing. The risk is different because of the
24 way it's being used.

25 Q But if you can monitor a username and a login, you

1 can also monitor the username and login assigned to
2 Authenticom; correct?

3 A Of course. That's exactly what they're doing. They
4 see it's negative and hostile and they close it down.
5 That's what you do in cybersecurity.

6 Q But my question is about the dealer, not about the
7 defendants. So if the dealer can monitor Ken, who got
8 hired in service, and monitor Bob, who got hired in
9 sales, and check to see whether they're doing anything
10 unusual, the dealer could do also do the same thing with
11 the login and username that's used by Authenticom;
12 correct?

13 A I'm not sure. They are using a username and
14 password that's coming into the Reynolds and CDK systems
15 or could, yeah.

16 Q And Bob in service, who needs to know where his
17 service appointments, you know, needs to log into the DMS
18 to be able see that, doesn't he?

19 A To be able to see what?

20 Q His service appointments, the cars he's got to work
21 on that day.

22 A Yeah, of course.

23 Q So that's a risk and another example.

24 A Yeah. It's a smaller risk because he's doing his
25 assigned role. This is called role-based access. You

1 want Bob. You assign his specific role. He's in one
2 department. He has access only to that data. The
3 credentials as configured -- and there are some materials
4 that are viewed that show that a specific user will be
5 given access to several different departments, that's not
6 role-based access. That's saying you're giving access to
7 all of these different areas so that that one, in this
8 case script, can pull back all that data. That's
9 definitely different than Bob who is working in finance
10 or wherever he is to do his specific job.

11 Q So Bob gets access to three datasets and that's
12 role-based access because that has to do with his job.

13 A What's his job at the dealer?

14 Q Bob is the, who knows, the deputy assistant manager
15 who's number 7 in the dealership.

16 A Okay. Yeah.

17 Q And Authenticom gets access to five datasets. Why
18 is that not role-based access?

19 A Because the role would be simulating, from what I
20 understand, emulating access that very few people in the
21 dealership have in aggregate. So again, when you're
22 trying to mitigate risk, what you do is you say people
23 who only need to know this data, they only have this type
24 of access. That means if you're in parts, why do you
25 need to see something in finance or business

1 transactions. And that's why you set it up that way, so
2 that they only see the data they should. It's also part
3 of data minimization in trying to mitigate your risk for
4 everything.

5 Q Do you have any idea in any given dealership how
6 many people have access to the same five datasets that
7 Authenticom has access to?

8 A Can you say that again? Do I have any idea --

9 Q Do you have any idea -- have you spent time studying
10 the structure of car dealerships?

11 A I have not spent extensive time studying car
12 dealerships.

13 Q Have you gone and interviewed any car dealership to
14 understand how many people at that dealership have access
15 to the same five datasets as Authenticom?

16 A No.

17 Q So you don't know one way or the other how many
18 people may have the same access to the same five datasets
19 as Authenticom.

20 A The same five people who for which datasets?

21 Q You don't know -- you don't know what's the norm at
22 a dealership in terms of having access to the same narrow
23 five datasets that Authenticom has access to.

24 A I'm not an expert on datasets for employees. What I
25 would like to say and repeat is that --

1 THE COURT: Don't repeat.

2 THE WITNESS: Okay. Yes, sir.

3 THE COURT: Don't repeat. We don't have time
4 for repeat.

5 THE WITNESS: Okay. Gotcha.

6 THE COURT: I think we get your point. Go
7 ahead.

8 BY MR. SCHWARZ:

9 Q So you testified on direct that even independent
10 data integrators can have access to Reynolds, can be
11 partners through RCI and partners through 3PA. Do you
12 remember that testimony?

13 A I said that I -- I think what I said is conceivably
14 they could; right?

15 Q Do you know that CDK and Reynolds have a policy of
16 prohibiting data integrators like Authenticom from
17 participating in the RCI and 3PA Programs?

18 A From what I understand is this is something that's
19 been offered in the past and Authenticom has declined. I
20 think that the policy for data integrators is based on
21 not them being data integrators, it's based on the
22 methods and the practices they use for getting the data.

23 Q You also testified, I believe, that you were aware
24 of two -- through your questioning, you were aware of
25 only two instances where there was a significant tax on

1 computational power. Do you remember that testimony?

2 A I said that those are the two specific ones that I
3 mentioned, and there are other instances that were not as
4 specific where the technical staff told me that they
5 noticed that there is taxes on the computational systems.

6 Q The one time was approximately eight years ago, the
7 single query from Authenticom?

8 A Yeah, that's right.

9 Q Just one instance?

10 A That's the only one known.

11 Q And you also mentioned XTime. Were you aware that
12 XTime is a company that puts its code on the DMS boxes?

13 A Okay.

14 Q Does that create a different kind of risk?

15 MS. MILLER: Objection. Foundation.

16 THE COURT: Overruled. Go ahead.

17 MR. SCHWARZ: I'd should ask --

18 THE COURT: Maybe you can be a little closer to
19 the mic or move it back.

20 BY MR. SCHWARZ:

21 Q Did you hear the question? I asked whether you were
22 aware that XTime was a company that placed its own
23 software code on the DMS box.

24 A I understood at some time they did that.

25 MR. WILKERSON: Objection.

1 THE COURT: Overruled.

2 THE WITNESS: But from what I understand, that
3 was not the reason for the incident.

4 BY MR. SCHWARZ:

5 Q Is there significantly greater risk when a company
6 puts code on the DMS box?

7 A Yeah, of course.

8 Q And you're aware that Authenticom never does that?

9 A That's what I've heard, yeah.

10 Q You've testified a little bit about that the dealers
11 were so critical that they created an ISAC. Do you
12 recall that testimony?

13 A Yes. Now, I didn't say just the dealers, I said the
14 industry.

15 Q The industry. Fair enough. The industry created an
16 ISAC. And the concern there --

17 THE COURT: Can you tell us what an ISAC is?

18 THE WITNESS: Yes, sir. It's an Information
19 Sharing Analysis Center. And so the role of an ISAC is
20 all these private sector companies come together and they
21 share threat information and best practices. So if
22 there's one dealer or even one car manufacturer that's
23 seeing a specific type of malware or specific type of
24 attack, in confidence they'll share it with everyone else
25 there because they're trying to raise the overall

1 protective ability of the sector itself. They'll share
2 best practices too. This is what we do. This is how we
3 obviate the risk.

4 THE COURT: Okay. Good. Next question.

5 BY MR. SCHWARZ:

6 Q In the auto industry, ISAC was created to deal with
7 issues associated with connected vehicles; right?

8 A No. I think it was connected -- I think it was
9 established to deal with issues of cybersecurity.
10 Connected vehicles are definitely one of those, sure.

11 Q Can you pull up PHX 096. If you can turn to page 3
12 of 6. First question -- let's go back to the first page.
13 I apologize. Do you recognize this document?

14 A I think this is the one that is probably similar to
15 the what I reviewed before, yes.

16 Q And this is about the auto or about ISAC and the
17 Auto-ISAC. Let's turn to page 306 and the next
18 paragraph. If you could pull up the first paragraph
19 "What is Auto-ISAC?" Is this the ISAC you were referring
20 to?

21 A Yes.

22 Q And this is an ISAC form in August of 2015 by
23 automakers?

24 A That's right.

25 Q And the last sentence "Auto-Isaac operates a central

1 hub for sharing, tracking and analyzing intelligence
2 about cyberthreats, vulnerabilities, and incidents
3 related to the connected vehicle"; correct?

4 A That's correct, yeah.

5 Q Authenticom doesn't have access to any information
6 related to connected vehicles, does it?

7 A I don't know that.

8 Q You don't know one way or the other?

9 A No. I think, you know, it's -- I don't know that,
10 but it's possible that you do.

11 Q Anything is possible. You don't know one way or the
12 other; correct?

13 A No.

14 MR. SCHWARZ: Can we move PX 96 into evidence?

15 THE COURT: Yes. Any objection?

16 MS. MILLER: No objection. (5:39 p.m.)

17 THE COURT: Okay. It's admitted.

18 MR. SCHWARZ: No further questions, Your Honor.

19 THE COURT: All right. Any redirect?

20 MS. MILLER: One question on redirect.

21 REDIRECT EXAMINATION

22 BY MS. MILLER:

23 Q Opposing counsel asked you specifically about
24 incidents, specifically about Authenticom and threats
25 that Authenticom was taxing the system. In your

1 discussions with the folks at CDK and Reynolds, did they
2 describe any system integrity problems or data corruption
3 issues that they couldn't trace specifically to
4 Authenticom but that had been caused by potentially other
5 third parties?

6 A Yes. There was one issue in particular where there
7 has been data corruption and I think the concern from CDK
8 and Reynolds folks is that Mr. Cottrell described the way
9 that with the right function that they writeback on the
10 data that's resident in the DMS. In data corruption
11 cases, even small mistakes to that data can not only
12 poison the data so that it's incorrect, but can cause the
13 processing of it also to get hung up. And so I think
14 that that is part of the concern right there is that
15 that's access to a system that is different just than the
16 data. It cannot only have negative effect on the data
17 but also on the system itself.

18 THE COURT: And that happened in an incident
19 involving Authenticom's writing back?

20 THE WITNESS: No. I don't know that for
21 certain.

22 MS. MILLER: That's all we have, Your Honor.

23 MR. SCHWARZ: No questions, Your Honor.

24 THE COURT: Thank you very much. Thank you.

25 (Witness excused at 5:45 p.m.)

1 THE COURT: All right. We've have 20 minutes
2 left. Let's get started on another witness. Are we
3 going back to the plaintiff's case now?

4 MS. GREGOR: Yes, we are. We have a couple
5 witnesses, nonparties we'd like to put on with very short
6 direct testimonies. Maybe eight to ten minutes each.

7 THE COURT: Good. Let's do the two of them.

8 MS. GREGOR: The plaintiff calls Brian Maas.

9 **BRIAN MAAS, PLAINTIFF'S WITNESS, SWORN**

10 DIRECT EXAMINATION

11 BY MS. GREGOR:

12 Q Good afternoon.

13 A Good afternoon.

14 Q Can you please state your name for the record.

15 A Brian Wayne Maas.

16 Q Where do you live?

17 A Sacramento, California.

18 Q What is your occupation?

19 A I'm president of the California New Car Dealers
20 Association.

21 Q Can you explain what the California New Car Dealers
22 Association is?

23 A It's a trade association representing franchised new
24 car dealers in the state of California. It's the largest
25 such state trade association in the country.

BRIAN MAAS - DIRECT

1 Q What are the goals of the association?

2 A We focus on two aspects. First is advocacy. We
3 lobby legislators and regulatory agencies in the state
4 capitol principally, although we assist on occasion in
5 Washington. And we also do compliance work with our
6 dealers. We do seminars. We have legal hotlines for
7 them to call with questions about how to comply with the
8 various laws that apply to them. We produce manuals that
9 are guidebooks for them to follow.

10 Q How many dealers are in the association?

11 A We have about 1,150 members out of approximately
12 1,300 franchised new car dealers.

13 Q What is the size of the California auto market?

14 A Approximately one out of every eight new cars sold
15 in the United States is sold in California. Last year it
16 was just under 2.1 million new cars.

17 Q How does the association know what issues are
18 important to its dealer members?

19 A The structure of the association itself is a trade
20 association. It's designed as a representative entity
21 for our members. So they know that they can call us, let
22 us know what issues are happening, particularly as it
23 relates to how they do their business. We have a board
24 of directors, executive committee, various legislative
25 and regulatory committees. As I mentioned, we have a

1 hotline. We do all kinds of seminars. We're constantly
2 hearing from our dealers about the issues that are of
3 concern to them.

4 Q Do you talk with dealers or associations from other
5 states?

6 A We do. There's an association of associations of
7 car dealers and we meet frequently, share ideas on
8 legislative issues, compliance issues, et cetera.

9 Q In your experience, can you explain why dealers
10 would want to work with an integrator rather than pulling
11 the data from a DMS system themselves?

12 A Dealers are in the business of selling and servicing
13 vehicles and they hire a whole range of experts to
14 perform functions for them. Pulling data isn't something
15 that they're focused on, so they'd likely hire an expert
16 to assist them.

17 Q Are you familiar with Authenticom's DealerVault
18 product?

19 A I am.

20 Q Outside of the testimony and demonstration that
21 you've seen today.

22 A Yes.

23 Q How so?

24 A We developed a relationship with DealerVault shortly
25 after they came on the market. We looked at their

1 product. We beta tested it. We talked to a number of
2 dealers. And they thought it would be a fabulous product
3 to give them control over who accesses dealer
4 information. It's a principle concern of my dealer
5 members. They made it very clear to us they wanted tools
6 that would give them control over who could or who could
7 not get access to the information in their databases.

8 Q You mentioned a relationship with Authenticom or
9 DealerVault just now. What is that relationship? Can
10 you explain?

11 A So we have a series of vendors that we have
12 relationships with where we license the use of our name
13 and logo in exchange for royalty payments.

14 Q And you have an opinion on the quality of the
15 DealerVault products?

16 A Yes. I think it's the best product in its market
17 space. There's no user interface that's easier to use.
18 The fact that it limits by field, et cetera, as we saw in
19 the demonstration this morning, all the feedback that
20 we've heard from our dealer members it's a quality
21 product.

22 Q You lived in Sacramento, but you traveled to Madison
23 to testify today. Why is that?

24 A Again, we heard from a number of dealers that they
25 care about the ability to use a product like a

1 DealerVault and we've heard a lot of angst amongst our
2 dealer body about the fact that DealerVault isn't able to
3 provide the quality of service that they had been
4 providing previously. And as I've learned through
5 reading various pleadings in this case, apparently that's
6 because of changes in business practices of CDK and
7 Reynolds.

8 Q We heard a lot of testimony today about security.
9 In your view as the president of the largest state
10 association of car dealers, how do dealers approach data
11 security?

12 A It's a critical issue. I saw the NADA memo that was
13 referenced earlier. We repeatedly talk to our dealers
14 about data security. We've done seminars on the topic.
15 California law is among the strictly in data security and
16 data breaches in the country on top of what federal law
17 already requires. So our dealers care deeply about it.
18 They read the same news accounts we all do and they want
19 to make sure that they're doing what they can to protect
20 themselves and that's why we thought a relationship with
21 DealerVault made sense.

22 Q Is it fair to say DealerVault is consistent with the
23 2013 NADA guidelines?

24 A Yeah. The purpose of those guidelines, which I've
25 read, are dealers take control of your data and do it in

1 a way that you feel comfortable with. Here's a series of
2 questions you should ask any vendor with whom you do
3 business. And get the best answer you can get to those
4 questions. And we felt that DealerVault was a vendor
5 that would provide great assistance in that regard.

6 Q Have dealers ever complained to your association
7 about their systems being degraded by integrators like
8 Authenticom?

9 A No.

10 Q Have dealers ever complained to your association
11 with data security being negatively affected by
12 integrators like Authenticom?

13 A No.

14 MS. GREGOR: No further questions. (5:47 p.m.)

15 THE COURT: Cross-examination?

16 MS. GULLEY: Yes, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. GULLEY:

19 Q Good afternoon, Mr. Maas. How are you?

20 A Doing well.

21 Q Good. So the California New Car Dealers Association
22 has a license agreement with Authenticom; correct?

23 A We do.

24 Q With DealerVault. I'm sorry.

25 A Yeah.

BRIAN MAAS - CROSS

1 Q And how much does DealerVault pay your association a
2 year?

3 A Less than \$25,000. We also have an agreement with
4 Reynolds and Reynolds.

5 Q Right. And so in other words -- so you don't have
6 an agreement with Reynolds and Reynolds related to the
7 DMS; correct?

8 A No. We have a relationship with their document
9 services.

10 Q Right. Nothing related to applications; right?

11 A With document services, as I stated.

12 Q Related to law forms related to California legal
13 forms; correct?

14 A Correct.

15 Q Right. But DealerVault itself related to the issues
16 in this case pays you \$25,000 a year; am I right?

17 A Less than 25,000.

18 Q And is that the only payment or are there other
19 payments associated with that contract?

20 A That's it.

21 Q Okay. You believe that all 1,150 dealership members
22 of the California New Car Dealers Association should have
23 the ability to give their Reynolds DMS username and
24 passwords out; right?

25 A I believe the dealers have the right to control

1 their data.

2 Q That's not my question. My question is can they
3 give access to the system away by giving their username
4 and passwords out in your opinion? Is that what you're
5 advocating?

6 A I'm advocating that the dealers have control over
7 their data.

8 Q Yeah, I understand sir. But my question is this:
9 Is it your opinion or not that all 1,150 dealership
10 members of the California New Car Dealers Association
11 should have the ability to give their username and
12 passwords to the Reynolds DMS out to someone else?

13 A That's up to the dealer to determine.

14 Q So yes, it should be up to the dealer to determine
15 whether to give their username and passwords out?

16 A It's the dealer's decision. It's their data.

17 Q So yes?

18 THE COURT: I think he's answered yes.

19 MS. GULLEY: Okay. I didn't hear it.

20 THE COURT: I think you got him. He said yes.

21 MS. GULLEY: Okay. All right. No more
22 questions. Thank you. (5:50 p.m.)

23 THE COURT: Any redirect?

24 MS. GREGOR: No, Your Honor.

25 THE COURT: Thank you very much. I don't know

1 whether to apologize or tell you to consider yourself
2 lucky that your testimony was so short. Let's do one
3 more witness.

4 MR. NEMELKA: Your Honor, we call Michael Korp.
5 And my colleague Josh Hafenbrack will examine him.

6 THE COURT: Very good.

7 **MICHAEL KORP, PLAINTIFF'S WITNESS, SWORN,**

8 DIRECT EXAMINATION

9 BY MR. HAFENBRACK:

10 Q Good afternoon, Mr. Korp. I guess it's good
11 evening. Could you please state your full name for the
12 record.

13 A Yeah. It's Michael Korp.

14 Q And where do you live, Mr. Korp?

15 A In the Chicagoland area.

16 Q What is your occupation?

17 A I own a software company called Open Recalls and I
18 am the director of operations of the mid-size dealer in
19 Chicago.

20 Q Okay. Let's start on the software size. When did
21 your company Open Recalls launch?

22 A In midsummer of 2014.

23 Q And what does Open Recalls do?

24 A As you'll soon see on the news today, like Takata
25 they filed for bankruptcy. We try and find open recalls

MICHAEL KORP - DIRECT

1 on cars that the repair hasn't been done yet. So like in
2 the case of Takata, there's almost 40 million vehicles
3 that were affected, 16 deaths. And like General Motors
4 in 2014 that made national news, you had about -- plus
5 150 deaths. So we went and closed those campaigns.

6 Q How many cars are on the road today with an
7 unresolved safety --

8 A According to CARFAX 63 million. It's about one out
9 of every four cars.

10 Q And does your company, Open Recalls, focus on any
11 particular segment of that population?

12 A Yeah. Because the manufacturers -- there's
13 oversight over the manufacturers for the first 18 months
14 that they track a campaign and communicate with the
15 customers and we pick it up after that.

16 Q So you focus on the older cars.

17 A Correct.

18 Q Fair to say that the cars with the older, unresolved
19 safety recalls are the hardest owners to track down?

20 A Yes.

21 Q And when you are able to track down a car owner who
22 is driving in a car with an unrecalled -- with a recalled
23 safety part, does that benefit the dealership?

24 A Yeah, of course. I mean it gives them a new
25 customer, and in a lot of cases, it gives them a customer

1 that they haven't seen in many years and the manufacturer
2 actually reimburses the dealer for the repairs.

3 Q To perform your services do you need access to
4 dealer data?

5 A Yes.

6 Q What kind of data?

7 A Consumer data, vehicle data, repair data and dates
8 that the services were performed.

9 Q How do you get that data?

10 A We get it from Authenticom.

11 Q Have you used Authenticom since the founding of your
12 company?

13 A Yes.

14 Q And still today?

15 A Yes.

16 Q What does Authenticom charge Open Recalls?

17 A Per login is about \$50, but if you -- it's \$50. If
18 you break it out per roof top, it comes to 35.

19 Q So 35 per roof top.

20 A Correct.

21 Q And are you happy with Authenticom's service?

22 A Very.

23 Q Can you -- why is that?

24 A Well, their DealerVault platform, that's safe, it's
25 secure, it's transparent between us and our dealers.

MICHAEL KORP - DIRECT

1 Q After you launched Open Recalls in July 2014, did
2 your company experience early success?

3 A We did. So we went from three employees to nine
4 full-time employees. We were campaigning to customers on
5 behalf of 30 dealers, with over 40 that were -- that we
6 had signed up.

7 Q And were you able to track down some of these car
8 owners who were driving around on recalled safety parts?

9 A Yes.

10 Q How many?

11 A So up until the spring, we were contacting about
12 40,000 unique consumers a month and at least 2,000
13 campaigns were being closed.

14 Q So your company is doing well. Did it encounter a
15 roadblock at some point?

16 A Yes.

17 Q When was that?

18 A I remember -- I don't remember the exact date, but I
19 remember it being a Wednesday in March of 2015. My
20 business partner and I came out of a breakfast we were
21 having and I checked my email for some reason and we had
22 gotten emails from Authenticom that our users per
23 Reynolds had been disabled.

24 Q Your usernames and logins had been disabled.

25 A Correct.

1 Q What company did that?

2 A Reynolds and Reynolds.

3 Q How significant of a problem was this for your
4 business?

5 A It was devastating.

6 Q Can you explain why?

7 A Well, one, we couldn't get the data that we needed
8 to bill the dealers. So we're strictly a
9 pay-for-performance. We're not -- we don't have monthly
10 licensing fees for what we do. So it pretty -- I mean we
11 were -- we pretty much shut down operations once we
12 realized the extent of the problem. And Reynolds'
13 stance, we stopped marketing and kept three employees
14 that were vital until we could figure a way around it.

15 Q So you laid off six employees?

16 A Correct.

17 Q And at this time in 2015 was CDK blocking your
18 access to dealer data?

19 A No.

20 Q Did that change?

21 A Yes, it did.

22 Q When did that change?

23 A I want to say August of 2016.

24 Q And throughout all this time you're always getting
25 the data through Authenticom; is that correct?

MICHAEL KORP - DIRECT

1 A Correct.

2 Q So CDK -- we're in August 2016 now.

3 A Throughout my entire career, no matter what dealer
4 group I worked for or ran, I always used Authenticom to
5 pull our data.

6 Q Thank you for that clarification.

7 A You're welcome.

8 Q So August 2016, CDK then began blocking your
9 Authenticom-provided access; is that correct?

10 A Correct.

11 Q Can you please describe the effect that has had on
12 your business?

13 A In the beginning it wasn't as devastating as what
14 happened with Reynolds because it started off slower
15 where they went after our smaller dealers and our smaller
16 dealer groups. Then it intensified over time wherein as
17 a whole, it's been extremely damaging to our business.

18 Q Did the blocking you've described here this
19 afternoon, has it harmed innovation in the auto industry?

20 A Absolutely.

21 Q How so?

22 A A lot of services that these DMS companies do not
23 provide, whether you have your kids in your garages there
24 building software to make our business better --

25 THE COURT: You're going to have to slow down

MICHAEL KORP - DIRECT

1 just a little bit. I know we're all eager to get out of
2 here, but you'll have to slow down a little bit so I can
3 follow you and the court reporter can get it too. So
4 you're talking about the services that the DMS companies
5 do not provide.

6 THE WITNESS: Correct. So there's obviously --
7 there's gaps in technology in my opinion in our business.
8 So whether you have big box retailers that deal with,
9 like, attribution model and things like, they want to
10 come in the industry, they need transactional data. But
11 if they're going to pay high fees and can only get \$800
12 or \$1000 a month for our software, they're not going to
13 enter our industry because they can't make money. Then
14 you have the kids that are coding in the garage that are
15 building -- there's a company right now that's in -- a
16 CDK or they're moving to a 3PA Program, I mean they build
17 algorithms that are totally based on how many phone calls
18 you get where your cars are priced, what clicked on
19 tenacities on the internet, how many cars you'll sell
20 that month or that day. And those companies just can't
21 compete paying those fees.

22 BY MR. HAFENBRACK:

23 Q After the blocking by Reynolds and CDK, did you
24 consider purchasing data integration directly from CDK
25 and Reynolds?

MICHAEL KORP - DIRECT

1 A Yes.

2 Q Why didn't you?

3 A Because of the expense.

4 Q If Authenticom goes out of business, what will
5 happen to Open Recalls?

6 A We're going to go out of business.

7 Q Why is that?

8 A Because we can't afford it.

9 Q I'd like to switch very briefly and discuss -- you
10 mentioned a car dealership, Ghaben Auto Group; is that
11 correct?

12 A Correct.

13 Q And you're the director of operations there?

14 A Yes.

15 Q What is the Ghaben Auto Group?

16 A We have five stores throughout the Chicagoland area.

17 Q And who is the Ghaben Auto Group's DMS provider?

18 A CDK.

19 Q Since when?

20 THE COURT: Can you tell us the name of that?
21 What's the name of that?

22 THE WITNESS: It's Ghaben Auto Group.

23 THE COURT: Can you spell it for us?

24 THE WITNESS: G-h-a-b-e-n.

25 THE COURT: G-h-a-b-e-n.

MICHAEL KORP - DIRECT

1 THE WITNESS: Correct.

2 THE COURT: Thank you.

3 BY MR. HAFENBRACK:

4 Q And you've been with CDK since 2004?

5 A Correct.

6 Q And does the Ghaben Auto Group use software vendors
7 like we've been discussing here today to help you sell
8 and service cars?

9 A Yes.

10 Q About how many?

11 A About a dozen.

12 Q And can you please describe maybe an example or two
13 of the kind of functions they perform?

14 A Accounting, telling us what cars to buy, how to
15 price them, advertising our cars like on CARFAX that we
16 talked about earlier today, key performance indicator
17 software to make sure that we're buying well.

18 Q Do some of your vendors use Authenticom to pull your
19 data?

20 A Yes.

21 Q When they do that, do you authorize Authenticom to
22 pull your data?

23 A Yes.

24 Q When Authenticom pulls your data, do they act as
25 your agent?

MICHAEL KORP - DIRECT

1 A Yes.

2 Q As a dealer, do you ever put social security
3 information on your DMS?

4 A No.

5 Q As a dealer, do you ever put credit card information
6 on your DMS?

7 A No.

8 Q As a dealer, do you ever driver's license
9 information on your DMS?

10 A No.

11 Q Has CDK blocked your ability to provide data to
12 Authenticom?

13 A Yes.

14 Q When did that start?

15 A Same time in -- same time as for Open Recalls in
16 August of 2016.

17 Q Does that continue today?

18 A Yes.

19 Q Has it hurt your business?

20 A Yes.

21 Q How so?

22 A So some of the vendors that were providing data to
23 us chose to stop providing us with those software
24 programs because they were not going to go into the
25 integration programs or the data integration programs.

MICHAEL KORP - DIRECT

1 And then the ones that went and moved over that had to
2 recode or were taking data that was coming in a different
3 format as -- we had cars not on the internet, we had cars
4 not priced right. We had just a loss of being able to
5 that make a decision as to what cars to buy, what to pay
6 for them, what to sell them for, when to move them.

7 Q In today's world, if the car is not on the internet
8 you can't sell it; is that right?

9 A That's correct. Right.

10 Q Do you have any vendors that received data
11 integration directly from CDK?

12 A Yes.

13 Q Are you aware of whether those vendors passed
14 through the data fees they paid to CDK to your
15 dealership?

16 A I can tell you one specific instance.

17 Q Please do.

18 A So at NADA in New Orleans this year I signed a
19 contract with Cox Automotive. And on their pricing
20 sheet, although it doesn't use the words CDK and Reynolds
21 in writing, they ask you are you a CDK or Reynolds dealer
22 and then they check the box if you are and then you pay a
23 \$600 data integration fee a month.

24 Q So 600 more if you're with CDK and Reynolds as
25 opposed to any other DMS.

MICHAEL KORP - DIRECT

1 A That's correct.

2 THE COURT: Per month you said?

3 THE WITNESS: Yes.

4 THE COURT: And what does Cox Automotive provide
5 you?

6 THE WITNESS: Do have Auto Trader, DealerTrack,
7 those talked about earlier today. They own Manheim Auto
8 Auctions.

9 BY MR. HAFENBRACK:

10 Q Cox is the largest automotive vendor in the country,
11 is they not?

12 A That's correct. That's right.

13 Q As a dealer, Mr. Korp, are you capable of making
14 decisions about the data security of your dealership's
15 data?

16 A Yes.

17 Q Would you ever do business with a company that you
18 risked your data security?

19 A No.

20 MR. HAFENBRACK: No further questions.

21 THE COURT: Before you leave off, you said you
22 were able to track down 40,000 unresolved recalls per
23 month; is that right?

24 THE WITNESS: At the time we were contacting
25 40,000 unique.

MICHAEL KORP - DIRECT

1 THE COURT: That's 40,000 cars you're talking
2 about; is that right?

3 THE WITNESS: Yeah. Correct.

4 THE COURT: Okay. And then you said 2,000
5 campaigns being closed. So that means you got a recall
6 on some defective switch that might cause a fire or
7 something like that, that's a campaign?

8 THE WITNESS: Right.

9 THE COURT: 2,000 of those got closed because
10 you tracked down every last one? Or what does it take to
11 close the campaign?

12 THE WITNESS: In our business, like it's open if
13 it hasn't been completed on that car and then it's closed
14 if it's just that car, not the entire campaign.

15 THE COURT: Okay. So 2,000 of them got closed
16 so --

17 THE WITNESS: We are dealing with a dealer base;
18 right.

19 THE COURT: So 2,000 campaigns. Is that per
20 month?

21 THE WITNESS: Yes.

22 THE COURT: So you got 40,000 contacts and then
23 that produced 2,000 basically recall service engagements.

24 THE WITNESS: Right. (6:02 p.m.)

25 THE COURT: Okay. I got it. Cross-examination.

MICHAEL KORP - DIRECT

1 MS. GULLEY: Thank you.

2 CROSS-EXAMINATION

3 BY MS. GULLEY:

4 Q Good afternoon, Mr. Korp. What DMS data do you pay
5 Authenticom for? The category.

6 A Are we talking Open Recalls or for the --

7 Q I'm sorry. Yeah, for Open Recalls. I'm thinking
8 it's probably information about the customers --

9 A Correct.

10 Q -- how to find the customers. Is there anything
11 else?

12 A The repair, when it was performed, the op codes.

13 Q So repair --

14 A Customer contact information.

15 Q So it's basically repair information and customer
16 contact information. How frequently do you need it? It
17 doesn't sound like it's a real-time situation.

18 A We used to get it overnight.

19 Q So what --

20 A Before we got blocked, we could call the dealer and
21 alert them and say hey, let our car out of service
22 without before performing the recall campaign.

23 Q So it's the kind of thing that you could do once a
24 day; right?

25 A Correct.

MICHAEL KORP - CROSS

1 Q What you've heard called batch. Is that not a
2 familiar term to you?

3 A No, I know what that is.

4 Q So it's that kind of service. Okay. And you're
5 paying -- your declaration had said you paid a 200 to
6 \$300 one-time fee plus 50 to \$65 a month. And then today
7 you've amended that to be around \$35 a roof top?

8 A No, I'm not amending it. That was a setup fee
9 initially. He didn't ask me about it. The \$65 that I
10 alluded to was before they switched to Dealer -- before
11 they switched to the new product.

12 Q But now in terms of you said you had -- in terms of
13 the employees at the Auto Group where you are -- am I
14 saying this right? Ghaben?

15 A Ghaben.

16 Q Ghaben. I'm sorry. The Ghaben Auto Group. Now, do
17 you have personnel and IT?

18 A We have an outside company.

19 Q Who's that?

20 A It's an outside IT company --

21 Q So --

22 A -- we work with.

23 Q -- you have an agent to do your IT and cybersecurity
24 and that's an outside firm. It's not Authenticom, it's
25 like a cybersecurity firm.

1 A No, they're more network.

2 Q A network IT-type agent.

3 A Right.

4 Q So in terms of -- going back to the data that you
5 need from Authenticom. So in terms of customers and
6 repair orders, you do understand that dealers have the
7 right to give you that data directly for free; right?

8 A No.

9 Q You don't understand that.

10 A No.

11 Q Well, you're not a Reynolds dealer. Your auto group
12 doesn't --

13 A I've used Reynolds for years, so I would consider
14 myself an expert on Reynolds.

15 Q So you don't believe that they can give you customer
16 information and information about repairs by publishing
17 that data through a reporting process and sending it
18 directly --

19 A No. Reynolds has never made -- with the dealers
20 that I work with -- actually your older system, UCS on
21 Reynolds' platform, those are the only people that pushed
22 with Authenticom on our behalf.

23 Q But you don't -- so basically you don't know one way
24 or another whether this -- all this testimony about
25 Dynamic Reporting could work for you? You've never

1 investigated that?

2 A No.

3 Q Okay. And you serve 40 dealerships right now
4 according to your declaration. Is that roof tops?

5 A At the time we did.

6 Q This is around that now?

7 A Yeah, it's around that now. It's more.

8 Q And there are more than 4,000 dealerships in America
9 that do not use CDK or Reynolds. You could go after them
10 right now; correct?

11 A Correct.

12 Q You said that there were --

13 A Can I answer the previous question about Dynamic
14 Reporting? I mean what it sounds from sitting here today
15 that the solution is to have dealership employees to FTP
16 the data to Authenticom to solve it, then my opinion is
17 the dealer doesn't work.

18 Q But you don't know whether they could just FTP it
19 straight to you, do you?

20 A I'm unaware.

21 Q So you don't know how Dynamic Reporting works;
22 you've never investigated getting the data for free;
23 whether sending it to Authenticom and paying them or
24 giving it straight to you for free, you just don't have
25 any idea; right?

1 A Correct.

2 Q Okay. All right. You said that there were too high
3 of fees to enter the RCI Program. Have you ever filled
4 out a perspective RCI participant form?

5 A No.

6 Q You have no idea what the fees are that they would
7 charge, do you?

8 A I do from conversations that I had with Reynolds
9 years ago before I even started Open Recalls.

10 Q What year was that?

11 A I don't remember.

12 Q Was it more than five years ago?

13 A I don't remember.

14 Q Could it --

15 A I'm sorry.

16 Q You just don't know what the RCI prices would have
17 been charged to you, do you?

18 A No. I mean I have a good idea what it would be
19 based on under feedback that we have in our community
20 and --

21 Q But you've never taken the time to find out; right?

22 A Not since we started Open Recalls, no.

23 Q Okay. Are there any relatives of Mr. Cottrell's
24 employed by the Ghaben group?

25 A No.

1 Q You've never heard of Jennifer Cottrell?

2 A I know a Jennifer -- oh, that's true. Jennifer
3 Cottrell, yes.

4 Q Who's that?

5 A Jennifer Cottrell? She's the office manager for our
6 Mazda store.

7 Q Okay. Do you know if she's any relation to --

8 A Oh, no.

9 Q Okay -- Mr. Cottrell. Sorry. Okay. All right. So
10 in paragraph 17 of your declaration, you say that if
11 Authenticom goes out of business, there's no way you can
12 get the data. You've said something similar today. But
13 you don't know or didn't even know whether you could get
14 the data from Reynolds through other processes, including
15 through RCI or Dynamic Reporting; correct?

16 A Can you ask me that again? I'm sorry.

17 Q You don't know as you sit here today whether you
18 could afford RCI or whether you could get it from Dynamic
19 Reporting; isn't that right?

20 A I wouldn't say that.

21 Q You don't have any personal knowledge; right?

22 A I wouldn't say that.

23 MS. GULLEY: Well, we'll just stand on the
24 testimony you've given. Thank you.

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CROSS-EXAMINATION

BY MR. PROVANCE:

Q Good afternoon, Mr. Korp. My name is Matt Provance.
I represent CDK.

A Hi, Matt.

Q Let's start with Open Recalls. You testified with
Ms. Gulley that you had never applied to the RCI Program.
Is it also true that you've never applied to the CDK and
3PA program?

A Correct.

Q And is it fair to say that the only reason you
haven't applied is because you don't like the price? You
think the prices are too high?

A No.

Q That's not fair to say?

A That that's the only reason?

Q Yeah. That's --

A No, that's not the only reason.

Q Why haven't you applied to the --

A As a dealer, to be told that I cannot give out my
data to a third party --

Q Hold on a second. I'm asking you about Open
Recalls, just to be clear.

A Okay.

1 Q And I asked you if there was any other reason
2 besides the price why you haven't applied to the 3PA
3 Program --

4 A That's the other reason.

5 Q -- on behalf of Open Recalls. And that's because
6 why?

7 A Because as a dealer we should be able to send our
8 data to Authenticom.

9 Q So you have an issue with the program in principle
10 as a dealer.

11 A Correct.

12 Q Not as a vendor.

13 A Can you rephrase that?

14 Q Just to be clear, you have an issue with the program
15 in principle as a dealer.

16 A Correct.

17 Q It doesn't affect how it -- how the service you
18 receive as a vendor --

19 A I feel the same way as a vendor. If the dealer
20 grants me access through a third-party as an agent to
21 collect their data from, yeah, it bothers me on both
22 sides whether I'm a dealer or a vendor.

23 Q Sir, isn't it true that the Ghaben Auto Group just
24 signed a new DMS contract with CDK?

25 A Yes and no.

1 Q Yes, it signed a contract?

2 A Yes.

3 Q And that was a few weeks ago; correct?

4 A No. It was a few months ago. It was in April.

5 Q The contract was signed in April?

6 A That's correct.

7 Q Okay. And it was signed by CDK at a later time?

8 A I think June 9th.

9 Q Okay. So there's a new contract in place; correct?

10 A That's correct.

11 Q And --

12 THE COURT: You said yes and no. What's the no
13 part?

14 THE WITNESS: What?

15 THE COURT: You said yes and no. What's the no
16 part?

17 THE WITNESS: I mean, the no part is it's not in
18 the contract. So when you do a new contract with ADP,
19 you usually do five-year terms. So there was 30 months
20 left in our term. They asked us to extend it. We said
21 no. And it was over this issue that we're talking about
22 today. So we added a store. There's 30 months left and
23 we're exploring our options.

24 BY MR. PROVANCE:

25 Q Excuse me, you're exploring your options?

1 A Um-hmm.

2 Q So you may go with a new DMS provider.

3 A We're exploring our options.

4 Q Sure. And I think you mentioned that you had signed
5 a contract with Cox Automotive; correct?

6 A Correct.

7 Q And that was at an NADA conference earlier this
8 year?

9 A Correct.

10 Q And that contract was with respect to what?

11 A Same thing we're talking about right now.

12 Q I'm sorry, what is the same thing that we're talking
13 about right now?

14 A DMS data, CRM data.

15 Q So you had signed a contract with Cox Automotive for
16 DMS?

17 A CRM.

18 Q Oh, for CRM.

19 A Correct.

20 Q And that's an application that you would use in
21 connection with DMS?

22 A Well, you're DMS. That's why there's a data fee of
23 \$600. If I use their DMS, there wouldn't be any.

24 Q Correct. So they were very interested in having you
25 use their DMS, weren't they?

1 A Of course.

2 Q And that's one of the options that you're now
3 exploring; correct?

4 A Right, of course.

5 Q And there's other options too; right?

6 A Not many, but yeah.

7 Q But there's a couple other and you're exploring
8 them.

9 A Yes.

10 Q Now, back to the contract that you just signed with
11 CDK. You're aware, sir, right, that there are provisions
12 in that contract that prohibit Ghaben from sharing access
13 to that DMS with third parties, are you not?

14 A We are not. As of yesterday, the gentleman that
15 signed it from the dealer group, I found out from
16 Authenticom's legal team yesterday that you guys had made
17 it an exhibit. I read it. I contacted Joe, and I said
18 "Did you realize that they changed the terms of our
19 agreement?" Because we were just supposed to add a
20 store. And he said "No." I said why -- "Didn't you read
21 it?" He goes "No." He was, like, I got an electronic
22 version of the document, signed it, and moved on. So we
23 didn't realize that you guys actually restated the
24 material language in our new contract because it wasn't
25 supposed to be brand new as a new term.

1 Q So your testimony is that the language in the
2 contract that prohibits third-party access is new; is
3 that right?

4 A Correct. The verbiage of the contract? Yes.

5 Q The provision in the contract that prohibits
6 third-party access you're saying is new; right?

7 A In my opinion, yes.

8 MR. PROVANCE: Your Honor, I'd like to show the
9 witness some exhibits I have here in binders.

10 THE COURT: Okay. While we're getting squared
11 away with the binders, why wouldn't it work to use the
12 Dynamic Reporting to get the information out of the
13 Reynolds DMS system and use it?

14 THE WITNESS: I'm not all that familiar with it,
15 just pretty much what we've heard today. And it sounds
16 like we're saying that instead of having a few companies
17 in control of it and pulling the data, that we're going
18 to have each dealership push data to Authenticom. So to
19 me, they're talking about replacing a few players in the
20 market with 10, 12, 15,000 employees pushing data doesn't
21 make sense to me. Seems a lot less secure.

22 THE COURT: Okay. Go ahead.

23 BY MR. PROVANCE:

24 Q Mr. Korp, if you could flip to defendants' Exhibit
25 13. Do you recognize that as the most recent CDK MSA?

1 A I didn't review it until yesterday, so no, I do not.

2 Q Okay. If you could flip, sir, to page --

3 MR. PROVANCE: Your Honor, we would move to
4 introduce this as an exhibit and I wouldn't have further
5 questions about it if there's no objection.

6 MR. HAFENBRACK: No objection.

7 THE COURT: All right. Let's move it in. This
8 is defendants' Exhibit 13 and it's admitted.

9 MR. PROVANCE: And I would have the same request
10 with respect to defendants' Exhibit 11 and 12. I have no
11 questions unless there's on objection.

12 MR. HAFENBRACK: No objection, Your Honor.

13 THE COURT: All right. 11 and 12 are also in.
14 Very efficient. Thank you.

15 MR. PROVANCE: Thank you. We'll pass the
16 question.

17 MR. HAFENBRACK: I just have a couple questions
18 on redirect, Your Honor.

19 THE COURT: Okay.

20 REDIRECT EXAMINATION

21 BY MR. HAFENBRACK:

22 Q Does Authenticom standardize the data that you get
23 from many different DMS providers?

24 A Yes.

25 Q And is that valuable service to you?

MICHAEL KORP - REDIRECT

1 A For sure. Absolutely.

2 Q Why is that?

3 A We don't have to worry about it. We get it, we
4 import it in the database and move forward every day.

5 Q And did I understand your testimony earlier that
6 Authenticom has actually lowered the price it charges you
7 since you signed up in 2014?

8 A Yes.

9 Q You mentioned you are -- you are considering
10 switching DMS providers in your contracts within 30
11 months; is that right?

12 A Yes.

13 Q And that's because of the pain CDK is inflicting on
14 you; is that right?

15 A Absolutely.

16 Q Is it difficult to switch DMS providers from your
17 standpoint?

18 A Very, yes.

19 Q And why that?

20 A I mean it changes everything about your dealership.
21 I mean it's -- the last time we did it, we just moved
22 from -- we've moved from one of CDK's Legacy applications
23 to their new drive system and you were behind for a good
24 six, seven, eight months.

25 Q So fair to say you have to -- you have to really

1 want to switch to --

2 A Oh, yeah. You definitely have to want to switch to
3 switch.

4 Q There was talk earlier of a provision about
5 unauthorized access. Is Authenticom pulling data with or
6 without your authorization?

7 A Rephrase that.

8 Q Does Authenticom have your authorization to pull
9 your data at your dealerships?

10 A Yes.

11 Q Are they unauthorized in your view?

12 A No.

13 MR. HAFENBRACK: No further questions.

14 THE COURT: All right. Thank you, Mr. Korp.
15 You can step down.

16 MS. GULLEY: Your Honor, can I ask one thing?

17 RECROSS-EXAMINATION

18 BY MS. GULLEY:

19 Q Do you know whether or not Reynolds objects -- do
20 you know that Reynolds does not object to Authenticom
21 standardizing data for you? Do you know that?

22 A No.

23 Q And in terms of switching, you've said last time, so
24 you've already switched once and you're thinking about
25 switching again; right?

MICHAEL KORP - REDIRECT

1 A Switching what?

2 Q DMS providers.

3 A No. We went CDK to CDK. We were on a Legacy CDK
4 system. We needed to upgrade.

5 Q So you went through the whole switch and now you're
6 thinking about going through it again.

7 A Yes.

8 MS. GULLEY: Okay. Nothing further.

9 THE COURT: All right. Thank you, Mr. Korp.

10 (Witness excused at 6:17 p.m.)

11 THE COURT: I'm going to ask counsel to just
12 kind of update me on where we are on the progress of
13 getting through the evidence. As I recall, you also
14 wanted to make closing arguments to me as well.

15 MS. GULLEY: That's correct.

16 MR. RYAN: Perhaps the plaintiff should go
17 first, what they have left.

18 THE COURT: That's a good idea. Looks like
19 they're thinking about it. If you guys need to confer
20 about how long you're going to take --

21 MS. GREGOR: May we have a moment?

22 THE COURT: Yes. And if you need time to confer
23 on your side because it will be your turn soon enough,
24 figure out how much time you're going to need.

25 (Pause)

MICHAEL KORP - REDIRECT

1 MS. GREGOR: We're ready whenever everyone is.
2 I'll just say that we have five witnesses left. Three
3 will be very short examinations of nonparty witnesses,
4 fact witnesses, and the remaining two are two experts
5 that have submitted declarations.

6 THE COURT: Okay. All right. And so where are
7 we on the clock? I assume that you kind of figured out
8 how much time you have for a two-day hearing and you know
9 how much time you have left.

10 MS. GREGOR: Here is our calculation is
11 Authenticom clocking in at 3 hours and 25 minutes and the
12 defendants clocking in at 3 hours and 57 minutes.

13 THE COURT: Okay.

14 MS. GREGOR: I think there may have been a
15 little bit of time -- there's an app for this as it turns
16 out. There's a chess clock app.

17 THE COURT: Good. Excellent.

18 MS. GREGOR: And there's 16 minutes of
19 unaccounted time, possibly court questions. I'm not
20 actually sure. It's some sort of third category.

21 THE COURT: I gave you an extra hour-and-a-half
22 today; so...

23 MS. GREGOR: Yes. We -- we'll put it wherever
24 you want it.

25 MS. GULLEY: We'll do the clock afterwards.

1 We've got a different amount.

2 MS. MILLER: I'm not sure.

3 MS. GULLEY: Can you tell me who your five
4 witnesses are? I only count you have four left.

5 MR. NEMELKA: Wayne Fitkin. We have Dominion.
6 We have Auto Leep, Gordon Klein, and Hal Singer.

7 MS. GULLEY: Okay. Got it.

8 THE COURT: So how much time do you have left by
9 your calculation? I know there's a dispute about it,
10 but...

11 MS. GREGOR: Three-and-a-half to four hours
12 includes closing and cross.

13 THE COURT: Okay. So you have three-and-a-half?
14 Okay. So that means that defendant must have
15 three-and-a-half.

16 MS. GULLEY: Well, just to be clear, when you
17 say five, that's just they have five witnesses left for
18 the plaintiff's case. And then the defendants have six
19 witnesses in their case.

20 THE COURT: I assumed you'd have some witnesses.

21 MS. GULLEY: You're right.

22 THE COURT: But just by rough measure then, just
23 in terms of time left, we're probably talking about
24 three-and-a-half to four hours then you have for your
25 case.

1 MS. GULLEY: Yeah, and we'll work it out by
2 email. Basically, yes.

3 THE COURT: And so how many witnesses do you
4 have?

5 MS. GULLEY: We have six.

6 THE COURT: Okay. So if my math is correct,
7 that means 11 witnesses for tomorrow.

8 MS. GULLEY: It's ambitious.

9 THE COURT: Well, we burned through a lot here
10 in the last 45 minutes. So if we go at that pace, that
11 would be good. The experts are a load, and so I would
12 suggest that, you know, I don't want to flatter myself,
13 but you don't need to repeat it quite as much as you
14 would if you were talking to a jury. So there's a lot of
15 redundant testimony today. So if you can just eliminate
16 the redundant testimony, I'm sure we can get this done.
17 And so let's think about that for tomorrow, and then I
18 will try to guide you by letting you know when I -- I
19 tried to do that some today. I probably could have been
20 a little bit more aggressive when I was getting bored.
21 But I'll try to do that more tomorrow so you can move on.
22 But I'll direct you now, especially with the experts,
23 move them along more quickly. I get the ideas. Then I
24 think we'll get it in.

25 So how much time -- remind me how much time you

1 reserved for your closing arguments.

2 MR. SCHWARZ: I think we were going to see how
3 much time we had left.

4 THE COURT: Whatever you had left. Okay.

5 MS. MILLER: We were capped at 30 minutes each,
6 Your Honor.

7 THE COURT: Okay. Thirty minutes was what you
8 had in mind. Okay. I would appreciate your closing
9 arguments, so I don't want those to get short shrift.
10 And so let's figure on doing that.

11 And we're starting -- we're starting -- what did I
12 say? Eight o'clock? We're starting at eight o'clock, so
13 be prepared for a little bit longer day. So if we have
14 to go to 6, we can. I'm not telling you to do that, but
15 I'm just saying that I want coherent closing arguments.
16 I think that will be useful to me. So I want to have at
17 least an hour for that.

18 MS. GREGOR: Understood. Thank you.

19 THE COURT: Al right. That's a good road map
20 for tomorrow. So enjoy the evening if that's possible,
21 and we'll see you at eight o'clock tomorrow.

22 (Proceedings concluded at 6:22 p.m.)
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2 I, LYNETTE SWENSON, Certified Realtime and
3 Merit Reporter in and for the State of Wisconsin, certify
4 that the foregoing is a true and accurate record of the
5 proceedings held on the 26th day of June 2017 before the
6 Honorable James D. Peterson, District Judge for the
7 Western District of Wisconsin, in my presence and reduced
8 to writing in accordance with my stenographic notes made
9 at said time and place.

10 Dated this 30th day of June 2017.

11
12
13 /s/_____

14 Lynette Swenson, RMR, CRR, CRC
15 Federal Court Reporter
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